



WANDSWORTH BOROUGH COUNCIL

LEISURE AND CULTURAL SERVICES

VOLUME THREE

CONDITIONS OF CONTRACT

FOR []¹

¹ One contract will be created for each Lot and so the specific services dealt with under each Lot will be detailed here.

DATED

201[•]

**(1) THE MAYOR AND BURGESSES OF THE LONDON
BOROUGH OF WANDSWORTH**

(2) [CONCESSIONAIRE]

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**AGREEMENT RELATING TO THE PROVISION OF
[] SERVICES IN THE LONDON
BOROUGH OF WANDSWORTH**

CONTENTS

1. DEFINITIONS..... 1

2. DOCUMENTS MUTUALLY EXPLANATORY 14

3. AMENDMENTS..... 14

4. CONTRACT PERIOD..... 15

5. MOBILISATION PERIOD AND MOBILISATION PLAN 15

6. PERFORMANCE OF THE SERVICES..... 15

7. APPOINTMENT OF CONCESSIONAIRE AS COUNCIL'S SUB-CONTRACTOR..... 18

8. MONITORING AND REVIEW MEETINGS 18

9. PERFORMANCE MONITORING 21

10. BUSINESS CONTINUITY PLAN..... 22

11. CHANGES..... 22

12. CONCESSION FEE 23

13. VALUE ADDED TAX..... 25

14. ASSIGNMENT AND SUB-CONTRACTING..... 25

15. CONTRACT MANAGEMENT 26

16. EMPLOYEES 27

17. Safeguarding Vulnerable Groups Act 2006 30

18. EQUAL OPPORTUNITIES, EMPLOYMENT AND HUMAN RIGHTS..... 31

19. ACQUIRED RIGHTS DIRECTIVE, TUPE AND PENSIONS 33

20. HEALTH AND SAFETY..... 33

21. OPERATING MANUAL 34

22. [PREMISES]..... 35

23. [UTILITIES COSTS AT THIRD PARTY PREMISES..... 35

24. EQUIPMENT 36

25. INSTRUCTIONS AND NOTICES..... 37

26. DATA PROTECTION 38

27. FREEDOM OF INFORMATION 42

28. CONFIDENTIALITY 43

29. RECORDS 44

30. CHANGE IN LAW..... 45

31. INTELLECTUAL PROPERTY RIGHTS 45

32. PAYMENTS TO THE COUNCIL/INTEREST ON LATE MONIES/CHARGES 46

33. PROBITY AND INDUCEMENTS 46

34.	LIABILITY AND INDEMNITY	48
35.	FORCE MAJEURE.....	49
36.	INSURANCE	50
37.	DEFAULT IN PERFORMANCE	52
38.	TERMINATION FOR CONTINUING FORCE MAJEURE	54
39.	TERMINATION.....	54
40.	ARRANGEMENTS FOR RE-TENDERING AND HANDOVER ON TERMINATION	57
41.	DISPUTE RESOLUTION	58
42.	STEP IN RIGHTS.....	60
43.	AGENCY	61
44.	PRESS AND PUBLICITY	61
45.	ASSISTANCE WITH LEGAL AND/OR OMBUDSMAN PROCEEDINGS.....	62
46.	RECOVERY OF SUMS DUE TO THE COUNCIL	63
47.	INFORMATION TECHNOLOGY	64
48.	ENVIRONMENTAL REQUIREMENTS	65
49.	GENERAL CONDITIONS	65
50.	NON-EXCLUSIVITY.....	67
Schedule 1	SPECIFICATION	69
Schedule 2	CONCESSION FEE	70
Schedule 3	TUPE AND PENSIONS.....	71
Schedule 4	METHOD STATEMENT	94
Schedule 5	PROCESSING, PERSONAL DATA AND DATA SUBJECTS	95
Schedule 6	BUSINESS CONTINUITY PLAN	96
Schedule 7	OPERATING MANUAL	97
Schedule 8	SCHEDULE OF ROUTINE OPERATIONS	98
Schedule 9	MOBILISATION PLAN.....	99
Schedule 10	PERFORMANCE REGIME	100
Schedule 11	COUNCIL'S INTER-AGENCY GUIDELINES	104
Schedule 12	CHECK BEFORE CONTACT REGISTER INFORMATION SHARING PROTOCOL	

THIS CONTRACT is made the _____ day of _____ 20[]

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH** of the Town Hall, Wandsworth High Street, London SW18 2PU (the "**Council**") of the one part; and
 - (2) [] a company registered in England and Wales (Company Number []) with its registered office located at [] (the "**Concessionaire**") of the other part,
- individually a "**Party**" and together known as the "**Parties**".

WHEREAS

- (A) The Council wishes to procure the provision of [] services within the Borough as more particularly set out in the Specification and the Concessionaire has offered to provide such services and the Council has accepted this offer.
- (B) The Parties have agreed to enter into this Contract incorporating the terms and conditions set out herein which are agreed between them.

1. DEFINITIONS

1.1. In this Contract, save where the context otherwise requires the following expressions shall have the meanings hereby assigned to them:

Phrase/Word	Meaning
Action Notice	has the meaning given to it in Condition 42.2;
Action Plan	has the meaning given to it in Condition 37.4.1;
Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event;
Annual Payment	has the meaning given to it in Condition 12.1.2;
Annual Payment Report	has the meaning given to it in Condition 12.4;
Authorised Officer	means the person or persons (together with any duly appointed deputies) appointed by the Council to act in such capacity in respect of this Contract, or any replacement notified by the Council to the Concessionaire from time to time;
Best Value Duty	means the duty imposed on the Council by section 3 of the Local Government Act 1999;
Borough	means the administrative area of the Council;
Business Continuity Plan or BCP	means a business continuity plan maintained in accordance with the Civil Contingencies Act 2004 by

the Council or by the Concessionaire as if the Concessionaire were a person to whom the Civil Contingencies Act 2004 applied;

Catastrophic Failure

means any action by the Concessionaire, whether in relation to the Services and this Contract or otherwise, which in the reasonable opinion of the Council's Authorised Officer has or may cause significant harm to the reputation of the Council;

CCR

means the Concessions Contracts Regulations 2016 (as amended);

CEDR

has the meaning given to it in Condition 41.7;

Change

has the meaning given to it in Condition 11.1.1;

Change in Law

means the coming into effect after the Commencement Date of:

- (a) any new Law;
- (b) any new Guidance; and
- (c) any applicable judgment of a relevant court of law which substantially and materially changes a binding precedent;

Concessionaire Equipment

means all items of Equipment that are not Council Equipment;

Concessionaire Impact Assessment

has the meaning given to it in Condition 11.1.4;

Concessionaire Notice of Change

has the meaning given to it in Condition 11.1.2;

Concessionaire Related Parties

means the Concessionaire's affiliates, any sub-contractors and agents and its or their directors, officers, employees and workmen in relation to the provision of the Services;

Concession Fee

has the meaning given to it in Condition 12.1;

Confidential Information

means information that ought to be considered as confidential information (however it is conveyed or on whatever media it is stored), including Intellectual Property Rights of either Party, the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, and all Personal Data and sensitive Personal Data within the meaning of the Data Protection Legislation;

Contract	means this contract concluded between the Council and the Concessionaire including the Schedules;
Contract Manager	means the individual (as notified to the Council from time to time) appointed by the Concessionaire to fulfil the functions of the Contract Manager under this Contract in accordance with Condition 15.2;
Contract Period	means, subject to the earlier termination of this Contract in accordance with its terms or extension of the Contract Period under Condition 4.3, a period commencing on the Services Commencement Date and ending on the Expiry Date;
Contract Standard	<p>means in relation to the performance of any part of the Services, a standard of performance:</p> <ul style="list-style-type: none"> (a) using all due skill and care and diligence as would a competent concessionaire providing services of the same scope and nature as the Services; (b) in accordance with best industry practices, the highest workmanlike standards and good professional practice and in a manner free from dishonesty and corruption; (c) in compliance with all Law, codes of practice, performance ratings and quality standards in operation from time to time; (d) in accordance with the standing orders and scheme of delegations to Chief Officers of the Council; (e) in co-operation with the instructions of the Council given in connection with or pursuant to this Contract; (f) in co-operation and liaison with fellow contractors as required to perform the Services; and (g) to the reasonable satisfaction of the Council;
Contracting Authority	has the meaning given to it in the Public Contract Regulations 2015;

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Controller has the meaning given to it in the Data Protection Legislation;

Council Change Decision has the meaning given to it in Condition 11.1.6;

Council Data means:

- (a) the information, data, text, diagrams, images or sounds (together with any database made up of any of these) or any other materials (in any medium) which are embodied in any electronic, magnetic, optical, tangible or portable media, or in any other format or media and which are:
 - (i) supplied or in respect of which access is granted to the Concessionaire by or on behalf of the Council; or
 - (ii) which the Concessionaire is required to generate, process, store or transmit pursuant to this Contract;
- (b) any Personal Data for which the Council is the Controller; and
- (c) any other data, information or materials (in any medium) which come into the possession of the Concessionaire in connection with or as a result of the provision of the Services including without limitation any data, information or materials held or stored in the Concessionaire's computer systems;

Council Equipment means the items listed in the Council Equipment Inventory prepared by the Council and appended to this Contract at [] including any additional equipment procured by the Concessionaire on the Council's behalf and at the Council's cost and all replacement Council Equipment whether funded by the Council or the Concessionaire in accordance with Condition 24.3;

Council Notice of Change has the meaning given to it in Condition 11.1.2;

Council Related Parties means the Council's contractors (of any tier) and agents and its or their directors, officers and employees in relation to the provision of the Services

(excluding the Concessionaire and the Concessionaire Related Parties);

Data Loss Event

means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

Data Protection Impact Assessment

means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Data Protection Legislation

means any applicable Law relating to the processing, privacy, and/or use of Personal Data, as applicable to the Processor and the Controller, including:

- (a) in the United Kingdom:
 - (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 2002/58/EC (ePrivacy Directive); and/or
 - (ii) the General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR) and/or the LED and/or the DPA 2018, and/or any corresponding or equivalent national laws or regulations (Revised UK DP Law);
- (b) (in member states of the European Union (EU) and/or European Economic Area (EEA): the GDPR and the ePrivacy Directive and all relevant EU and EEA member state laws or regulations giving effect to or corresponding with any of them; and
- (c) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority.

Data Subject

has the meaning given to it in the GDPR;

Data Subject Request	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
Default Notice	has the meaning given to it in Condition 37.5;
Dispute Resolution Procedure	means the procedure set out in Condition 41;
DPA 2018	means the Data Protection Act 2018;
Effective Date	means the date of this Contract;
EIR	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or other relevant Government department in relation to such regulations;
Employees	means all persons engaged, appointed, employed or deployed by the Concessionaire or any sub-concessionaire of the Concessionaire in the provision of the Services including without limitation the Concessionaire’s partners, directors, employees, personnel, and staff and shall include the Concessionaire’s agents and authorised Sub-Concessionaires and their personnel and employees and “ Employee ” means any one of the Employees;
[Equipment	means all fixed and movable items of equipment, plant, vehicles, machinery, tools and containers which the Concessionaire employs to deliver the Services;]
Excess Profit Share	means [] ² ;
Expert	means an expert appointed pursuant to Condition 41;
Expiry Date	means 31 March 2025 unless extended in accordance with Condition 4.3;
Final Inventory	has the meaning given to it in Condition 24.12
FOIA	means the Freedom of Information Act 2000;
Force Majeure Event	means the occurrence after the Commencement Date of:

² Note to Bidders: The Excess Profit Share shall be the percentage of excess profit that the Concessionaire will pay to the Council as identified in its Pricing Schedule.

GDPR
Good Industry Practice

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless in any case the Party claiming the benefit of relief (or a Concessionaire Related Party or Council Related Party as the case may be) is the source or cause of the contamination; or
- (c) lightning, earthquake, fire, flood, storm or extreme weather condition or other natural disaster,

which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Contract and such event continues for five (5) days, unless occurrence of any of the events listed in paragraphs (a)-(c) (above) are caused by the act or omission of the Affected Party;

means the General Data Protection Regulation (Regulation (EU) 2016/679);

means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonable and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

Guaranteed Payment

means the sum of [£] exclusive of VAT which the Concessionaire will pay to the Council in thirteen (13) equal instalments every four (4) weeks of the Contract Period;

Guidance

means any applicable guidance, code of practice or directions issued by a Relevant Authority or a Regulatory Body which the Concessionaire is bound to comply pursuant to the requirements of any Law;

HSWA

means the Health and Safety at Work, etc Act 1974 and shall include any codes of guidance issued by the Council and supplied to the Concessionaire either before or during this Contract and any codes of guidance prepared by the Concessionaire;

Impact Assessment

has the meaning given to it in Condition 11.1.3;

Index

means the Consumer Price Index (however such index might be termed) issued by the Office for National Statistics or any other government department upon which duties in connection with the compilation and maintenance of such index shall have devolved or in the absence of any such index such other index as the Authorised Officer may reasonably specify;

Information Commissioner's Office

means the United Kingdom's independent authority set up to uphold information rights in the public interest and data privacy for individuals;

Intellectual Property Rights

means any and all patents, patent application, trade marks, service marks, copyright, moral rights, rights in design, know-how, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

Inventory

has the meaning given to it in Condition 24.1;

Law

means any applicable law, statute statutory instrument, standards, law proclamation, order, resolution, regulation, notice, judgement, determination, rule, bye-law, directive, code of conduct, or other instrument or requirement in each case as aforesaid having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by HM Parliament, the legislative making institutions of the European Union, any court, tribunal or other persons or body exercising judicial functions or any Commission of Inquiry, local authority, statutory undertaker or relevant authority or any other body or persons having such powers and any exercise of the Royal Prerogative and any code of practice, supplemental circular or guidance issued pursuant to each of the foregoing;

LED

means the Law Enforcement Directive (Directive (EU) 2016/680);

Longstop Date

means the 31 March 2020;

Losses

means any and all claims, fees, costs, expenses (including without limitation, legal costs on a solicitor and own client basis), loss, damages, demands and liabilities;

Management Information

means all or any of the following information as the Council may specify from time to time during the Contract Period:

- (a) staffing structures;
- (b) equipment inventory;
- (c) service schedules;
- (d) work programmes;
- (e) staff turnover figures;
- (f) staff sickness levels;
- (g) health and safety policy and procedures;
- (h) risk assessments;
- (i) complaints and compliments received;
- (j) any other information reasonably requested from the Concessionaire by the Council from time to time.

The above list is not exhaustive and the Council may from time to time change the items in the list provided that it has given the Concessionaire notice of such changes in accordance with Condition 7;

Mediator

has the meaning given to it in Condition 41.6;

Method Statement

means the statement annexed to this Contract at Schedule 4 (Method Statement) detailing the Concessionaire's proposals for the performance of the Services. In the event of any inconsistency between the Method Statement and the Conditions and other Schedules then the Conditions and other Schedules shall prevail;

Mobilisation Period

means the period commencing on the Effective Date and ending on 31 March 2020;

Mobilisation Plan

means the plan attached at Schedule 9 (Mobilisation Plan) which sets out the obligations and responsibilities imposed on and activities to be undertaken by the Concessionaire during the Mobilisation Period, with such modifications, amendments and alterations as may be required and approved by the Council in accordance with this Contract;

Net Book Value

means the original cost of an asset or liability minus depreciation and amortisation;

Ombudsman

has the meaning given to it in Condition 45.3;

Performance Default

means:

- (a) any negligent act or omission; and/or
- (b) any breach of contract; and/or
- (c) any failure by the Concessionaire properly to perform any of the obligations, terms and Conditions of this Contract including (without limitation) any failure to perform the Services to the Contract Standard;

Periodic Payment

has the meaning given to it in Condition 12.1.1;

Periodic Payment Report

has the meaning given to it in Condition 12.3;

Persistent KPI Failure

has the meaning set out in Schedule 10 (Performance Regime);

Personal Data

has the meaning given to it in the Data Protection Legislation;

Personal Data Breach

has the meaning given to it in the Data Protection Legislation;

Prescribed Rate

means four per cent (4%) above the base rate from time to time of NatWest Bank Plc;

Processor

has the meaning given to it in the Data Protection Legislation;

Processor Personnel

means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Contract;

Prohibited Act

means:

- (a) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward:
 - i. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council; or
 - ii. for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;
- (b) entering into this Contract or any other contract with the Council where a commission has been paid or has been agreed to be paid by the Concessionaire or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;
- (c) committing any offence:
 - i. under the Bribery Act 2010;
 - ii. under legislation creating offences in respect of fraudulent acts; or
 - iii. at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Council;

Protective Measures

means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after

	an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
Quarter	means each period of three (3) months in each Year of the Contract Period ending on: <ul style="list-style-type: none"> (a) 30 June; (b) 30 September; (c) 31 December; and (d) 31 March;
Rectification Notice	has the meaning given to it in Condition 37.2;
Regulatory Bodies	means those government departments and regulatory, statutory and other entities, communities, ombudsmen and bodies, which whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate, investigate or influence the matters dealt with in this Contract or any other affairs of the Council or the Concessionaire as applicable;
Relevant Authority	means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
Remedial Period	has the meaning given to it in Condition 37.2.4;
Report Dispute Notice	has the meaning given to it in Condition 12.5.2;
Required Action	has the meaning given to it in Condition 42.3;
Schedule	means the schedules to this Contract and “ Schedule ” means any one or other of the schedules;
Service Commencement Date	means 1 April 2020;
Services	means the services which the Concessionaire provides to the Council under this Contract as further detailed in Schedule 1 (Specification);
Sub-processor	means any third party appointed to process Personal Data on behalf of the Concessionaire in relation to this Contract;
Supervisory Authority	means any regulator, authority or body responsible for administering Data Protection Legislation;

SVGA		means the Safeguarding Vulnerable Groups Act 2006 (as amended);
Termination Date		means the date of early termination of this Contract in accordance with its Conditions;
[Third Party Premises		means the premises listed in Appendix 5 of Schedule 1 (Specification) which are occupied by third parties;]
TUPE		means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI 2006/246) as amended;
[Utilities Costs		has the meaning given to it in Condition 23.1;]
[Utilities Cost Dispute Notice		has the meaning given to it in Condition 23.6;]
VAT		means value added tax;
Wandsworth Work Match Programme		means the Council's programme of matching out-of-work people living in the Borough with new jobs within the Borough;
Working Day		means any day of the week from Monday to Friday inclusive from 09:00 to 17:00 but excluding all public holidays in England and such other days if any as the Authorised Officer may notify to the Concessionaire in writing as days during which the Council's offices are closed to the public; and
Year		means a period of twelve consecutive calendar months commencing on the Effective Date falling within the Contract Period.

1.2. In this Contract except where the context otherwise requires:

- 1.2.1. the masculine includes the feminine and vice versa;
- 1.2.2. the singular includes the plural and vice versa;
- 1.2.3. a reference to any Condition, sub-Condition, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such Condition, sub-Condition, paragraph, schedule, recital or annex of and to this Contract;
- 1.2.4. save where stated to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.5. any reference to any Law, legislation, enactment, order, regulation or other similar instrument shall be construed as a reference to that legislation, enactment, order, regulation or instrument as may be amended, replaced, consolidated or re-enacted;

- 1.2.6. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
 - 1.2.7. words and phrases with a first capital letter or any derivation thereof shall (as the context so requires) have the meanings set out in this Condition 1;
 - 1.2.8. headings are for convenience of reference only;
 - 1.2.9. words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and
 - 1.2.10. times specified in the Contract, and any variation in those times, or any other times or timescales reasonably laid down by the Authorised Officer in respect of the Concessionaire's obligations, shall be of the essence of this Contract and any failure by the Concessionaire to adhere to such times shall (notwithstanding anything elsewhere contained in the Contract) be a breach of this Contract.
- 1.3. Subject to any express provision to the contrary the obligations of either Party performed at that Party's own cost and expense.
 - 1.4. The Parties have had the opportunity to take legal advice and no Condition of this Contract shall be construed contra proferentum.

2. DOCUMENTS MUTUALLY EXPLANATORY

- 2.1. Except as otherwise expressly provided, this Contract and Schedules are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Authorised Officer who shall thereupon issue to the Concessionaire appropriate instructions in writing and the Concessionaire shall carry out and be bound by such instructions.
- 2.2. In the event of any inconsistency between the provisions of the body of these Conditions and the Schedules, or between the Schedules, the inconsistency shall be resolved according to the following descending order of priority;
 - 2.2.1. these Conditions; and
 - 2.2.2. the Schedules.
- 2.3. For the avoidance of doubt, the Specification shall at all times have priority over the Method Statement.

3. AMENDMENTS

Without prejudice to the rights and powers of the Authorised Officer under this Contract and notwithstanding any other of these Conditions, no deletion from, addition to or variation of the Conditions shall be valid or of any effect unless agreed in writing executed as a deed and sealed by the Council and on behalf of the Concessionaire by a duly authorised signatory or signatories or as provided for in Condition 11.

4. CONTRACT PERIOD

- 4.1. This Contract shall subsist and the Concessionaire shall provide the Services for the Contract Period subject to Condition 4.3 and subject to earlier termination in whole or in part in accordance with the terms of this Contract.
- 4.2. The Concessionaire shall execute this Contract promptly and shall not, save as expressly authorised in advance by the Council in writing, commence the Services.
- 4.3. In accordance with Regulation 18(3) of the CCR, the Contract may be extended to enable the Concessionaire to recoup any investment made in the provision of the Services such extension shall be no longer than an aggregate of five (5) years. Any such extension shall be mutually agreed between the Parties. In the event (and on each occasion) that the Contract Period is extended the Council shall give written notice to the Concessionaire not less than one (1) year prior to the expiry of the Contract Period (or if applicable the Contract Period as extended). In such circumstances, the definitions of Contract Period and Expiry Date shall be deemed amended accordingly and the Concessionaire shall continue to provide the Services.

5. MOBILISATION PERIOD AND MOBILISATION PLAN

- 5.1. During the Mobilisation Period the Concessionaire shall:
 - 5.1.1. comply with the Mobilisation Plan;
 - 5.1.2. keep the Mobilisation Plan continually under review; and
 - 5.1.3. not modify the Mobilisation Plan other than as permitted by this Clause 5.
- 5.2. Where the Concessionaire identifies that an amendment is required to the Mobilisation Plan, the Concessionaire shall request that the Council approves the relevant amendment.
- 5.3. Where the amendment to the Mobilisation Plan is:
 - 5.3.1. required as a result of a breach of the Clause 5.1.1, the Council shall be entitled to approve or reject such amendment in its absolute discretion; or
 - 5.3.2. required for any other reason than a breach of the Clause 5.1.1, the Council shall be entitled to approve or reject such amendment (acting reasonably),and in either event communicate its decision to the Service Provider within a reasonable period of the request being made.
- 5.4. If the Concessionaire's obligations or responsibilities under the Mobilisation Plan are not satisfied by the Longstop Date, this Contract shall terminate at 23.59:59 hours on the Longstop Date and for the avoidance of doubt no compensation shall be payable by the Authority to the Concessionaire as a result of such termination.

6. PERFORMANCE OF THE SERVICES

6.1. Service Standard

6.1.1. During the Contract Period the Concessionaire shall perform the Services in a proper and skilful manner to the Contract Standard in accordance with this Contract.

6.1.2. The Concessionaire shall throughout the Contract Period:

6.1.2.1. maintain all documentation and files in a professional manner;

6.1.2.2. maintain a communications system acceptable to the Authorised Officer and unless otherwise instructed by the Authorised Officer the Concessionaire shall ensure the delivery of all correspondence and documents to the Authorised Officer either by hand, facsimile transmission, electronic mail, the document exchange system or by first class post;

6.1.2.3. submit to the Authorised Officer regular written progress and monitoring reports and such statistical information as the Authorised Officer may require from time to time; and

6.1.2.4. comply fully with all procedures approved by the Authorised Officer for the performance of the Services, which procedures may be varied only with the prior written approval of the Authorised Officer, such approval not to be unreasonably withheld.

6.2. **Council's Instructions**

The Concessionaire shall at all times carry out the instructions issued by the Authorised Officer in connection with this Contract. Should the Concessionaire require any further instruction or information for, or in connection with, the performance of its obligations under this Contract, the Concessionaire shall make a written application to the Authorised Officer in which the requirement is stated in adequate detail. Such application shall be made on a date which, having regard to the date upon which the Concessionaire reasonably needs the instruction or information for or in connection with the performance of the obligations under this Contract, is neither too far away from, nor too close to, that date having regard to all the circumstances including the time likely to be required by the Authorised Officer to respond to the application.

6.3. **Council's Policies and Customer Care**

6.3.1. The Council's commitment to provide the customers with high quality value for money services is set out in its own quality initiatives. The Concessionaire's main responsibilities are to:

6.3.1.1. familiarise itself with the Council's care standards of which it is notified by the Authorised Officer and act accordingly;

6.3.1.2. ensure that it satisfies the aims and standards of the initiatives;

6.3.1.3. demonstrate highest standards of customer care including being polite, helpful and courteous at all times;

- 6.3.1.4. express all written communications clearly and concisely, keeping technical jargon to a minimum;
- 6.3.1.5. identify the names of its key staff contacts;
- 6.3.1.6. adopt a professional telephone manner – calls should be answered promptly and courteously, messages should be clear and responded to;
- 6.3.1.7. be aware of the different needs of the client and others affected by this Contract and take account of particular requirements for reasons of age, gender, race or disability; and
- 6.3.1.8. set up and operate a complete complaints procedure in accordance with Condition 6.4;

6.4. Complaints in respect of Service Provision

- 6.4.1. By the Services Commencement Date the Concessionaire shall have set up a clearly defined complaints procedure in compliance with the requirements of the Specification (subject to approval by the Authorised Officer) with agreed performance measures and recording systems, including a complaints register, to enable the number and types of complaints to be checked and monitored. For each complaint the records should identify:
 - 6.4.1.1. the complainant;
 - 6.4.1.2. the nature and category of the complaint;
 - 6.4.1.3. the action taken in response to the complaint;
 - 6.4.1.4. preventative action taken to stop similar occurrences; and
 - 6.4.1.5. the relevant dates.
- 6.4.2. The Concessionaire shall deal with all complaints received from whatever source in a prompt courteous and efficient manner and within the requirements and timescales as notified to the Concessionaire by the Council from time to time.
- 6.4.3. The Concessionaire shall notify the Authorised Officer forthwith in writing of all complaints received and the steps taken in response thereto and shall provide a copy of each written complaint (or register entry for verbal complaints) and the response thereto. A copy of the complaints register and statistics shall be incorporated within the Concessionaire's monitoring reports submitted to the Authorised Officer in accordance with Condition 6.1.2.3. Any data provided in relation to the complaints register will be compliant with the Data Protection Legislation.

7. APPOINTMENT OF CONCESSIONAIRE AS COUNCIL'S SUB-CONTRACTOR³

The Council hereby appoints the Concessionaire, in consideration of [ten pounds (£10.00)] receipt of which is hereby acknowledged by the Concessionaire, as its sub-contractor in relation to the Council's contract with the North-East Surrey Crematorium Board for the management of the North-East Surrey Crematorium under which the Council is contracted to provide a crematorium management service. The appointment is for the remainder of the term of that contract. The Council confirms that it has obtained the consent of the North-East Surrey Crematorium Board to the sub-contracting. The Concessionaire having been provided with a copy of the contract⁴ confirms that it will deliver the services described within it as if it were the main contractor and in accordance with the performance indicators. The Concessionaire shall indemnify and keep indemnified the Council in respect of all Losses suffered or incurred by, awarded against or agreed to be paid by the Council arising from or in connection with any breach by the Concessionaire of any of the obligations under the contract. Where the Parties agree detailed arrangements for the operation of this sub-contract then these shall be deemed to form part of this Contract.

8. MONITORING AND REVIEW MEETINGS

- 8.1. Throughout the Contract Period, the Parties shall work together to ensure that this Contract and the Concessionaire's provision of the Services represent value for money and continuous improvement for the benefit of the Council.
- 8.2. The Concessionaire's provision of the Services shall be measured against the obligations, targets, benchmarks and standards set out in this Contract.

8.3. Concessionaire Monitoring

- 8.3.1. Without prejudice to each and every remedy of the Council in the event of a failure of the Concessionaire to perform any of its obligations in accordance with the terms of this Contract, the Concessionaire shall at the Services Commencement Date initiate, and throughout the Contract Period maintain systems designed to ensure that the Services are carried out to the Contract Standard. Such systems shall be operated by the Contract Manager for and on behalf of the Concessionaire and shall so far as reasonably practicable be in place, before the Concessionaire commences provision of the Services.
- 8.3.2. In the event of the Concessionaire being unable to provide the Services or any part thereof, the Concessionaire shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration. Nothing in this Condition 8.3.2 shall in any way alter, modify, relieve or in any other way vary the Concessionaire's obligation to provide the Services or the Council's powers under other Conditions.

³ Note to Tenderers: This clause is only applicable to the Lot 3 Contract.

⁴ Note to Tenderers: A copy of this contract has been uploaded to the Portal.

- 8.3.3. The Concessionaire shall, as soon as reasonably practicable, provide the Authorised Officer with any information relating to the provision of the Services which the Authorised Officer may reasonably request.
- 8.3.4. The Concessionaire shall forthwith inform the Authorised Officer if any anticipated changes to legislation, professional standards or otherwise may give rise to changes to the Services whether such changes are likely to give rise to any substantial opportunities or benefit to the Council or any substantial difficulties.
- 8.3.5. The Concessionaire shall comply with the monitoring arrangements set out in this Contract including, but not limited to, providing such data and information as the Concessionaire may be required to produce under this Contract.
- 8.3.6. In the event of the Authorised Officer requesting information from the Concessionaire in connection with any Council report, including without limitation the Council's own business continuity plans, the Authorised Officer shall notify the Concessionaire of the dates by which it is required. Provided such notice is reasonable the Concessionaire shall provide the information requested by the dates stipulated.

8.4. Council Monitoring

- 8.4.1. The Authorised Officer may introduce random sampling to determine the performance of the Services. The Authorised Officer reserves the right to employ his own representatives or agents to undertake such random sampling, and the Concessionaire shall afford all reasonable access and co-operation for the Authorised Officer, his representatives or agents in this respect.
- 8.4.2. The Concessionaire shall at all times during the provision of the Services allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access upon reasonable notice (except where it is deemed reasonably appropriate by the Authorised Officer to gain immediate access):
- 8.4.2.1. to all sites or locations of the Concessionaire for the purpose of inspecting work being performed pursuant to the provision of the Services;
 - 8.4.2.2. to all sites or locations of the Concessionaire for the purpose of inspecting records and documents in the possession, custody or control of the Concessionaire in connection with the provision of the Services;
 - 8.4.2.3. to all Equipment, materials, stores and spare parts in order to ensure that such items comply with manufacturers' specifications;
 - 8.4.2.4. to all Equipment, materials, stores and spare parts (whether such items are provided by the Council, the Concessionaire or otherwise) used or proposed to be used in connection with the provision of the Services for the purpose of ensuring that such Equipment, machinery, tools, equipment, materials, stores and spare parts meet the requirements of this Contract and all relevant statutory requirements; and

8.4.2.5. to any Employee of the Concessionaire for the purposes of interviewing such persons in connection with the provision of the Services.

8.4.3. The Authorised Officer may each year submit to the Concessionaire completed questionnaires relating to the Concessionaire's performance under this Contract and the responses contained in the completed questionnaires shall be retained by the Concessionaire for management information purposes so as to enable improvements to be made in service delivery and for use in performance review meetings as referred to in Condition 8.5.

8.5. Review Meetings

8.5.1. The Parties shall attend regular review meetings at the Council's offices every three (3) months and an annual review each Year of the Contract Period (at no additional cost to the Council).

8.5.2. The Concessionaire shall ensure that the Contract Manager is available to meet the Authorised Officer, as and when required, for a sufficient amount of time as is reasonably decided by the Authorised Officer (at no additional cost) to enable the Council to monitor and review the Concessionaire's performance under this Contract. Additional meetings (also at no additional cost) may reasonably be required by the Authorised Officer including without limitation if, in the Authorised Officer's opinion, this Contract is not running satisfactorily. The Contract Manager shall bring to these meetings such files and reports as may be requested by the Authorised Officer together with such Management Information as the Concessionaire is obliged to retain for the information of the Council under this Contract. Such meetings will usually take place between 9.00 and 17.00 on Working Days and, unless otherwise agreed by the Authorised Officer, all such meetings shall take place on Council premises. The Council shall be under no obligation to provide parking facilities for the Concessionaire's vehicles at the Council's offices or any other venue at which meetings may be held.

8.6. Continuous Improvements

8.6.1. The Concessionaire shall have a policy of continuous improvement in relation to the provision of the Services and shall be able to show at any time during the Contract Period evidence of the practices designed to achieve such improvement.

8.6.2. The Concessionaire acknowledges that:

8.6.2.1. the Council is subject to the Best Value Duty; and

8.6.2.2. the relevant provisions of this Condition 8 (Monitoring and Review Meetings), [Condition 22 (Premises)] and 29 (Records) shall assist the Council in discharging its Best Value Duty in relation to the Concessionaire's performance of the Services.

8.6.3. To the full extent of its obligations under this Contract, the Concessionaire shall undertake or refrain from undertaking such actions as the Council may reasonably

request to enable the Council to comply with Part I of the Local Government Act 1999, including but not limited to the making of arrangements to secure continuous improvements in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

- 8.6.4. If during the Contract Period the Authorised Officer and/or the Concessionaire (subject to the prior written consent of the Authorised Officer) modifies the methods employed by the Concessionaire to operate out the Services such that in the opinion of the Authorised Officer savings are made by the Concessionaire in the cost of providing the Services then the amount of such savings as shall be notified by the Concessionaire to the Authorised Officer and approved by the Authorised Officer shall be divided equally between the Council and the Concessionaire. In the event of a dispute, this matter shall be determined by the Expert in accordance with Condition 41 (Dispute Resolution).

8.7. Management Information

- 8.7.1. Where requested by the Council, the Concessionaire shall supply the Management Information to the Council on a quarterly basis during the Contract Period and within fourteen (14) days of the end of each Quarter.

- 8.7.2. Upon receipt of the Management Information supplied by the Concessionaire, the Concessionaire hereby permits the Council:

8.7.2.1. to publish on their website or in any alternative media the Management Information;

8.7.2.2. to store and analyse the Management Information and produce statistics; and

8.7.2.3. to share the Management Information or any statistics produced using the Management Information, with any other Contracting Authority,

for the purpose of producing aggregate data relating to the Services arising from this Contract and reporting on such data.

- 8.7.3. The Council shall not publish or use the Management Information provided or the aggregate data produced in such a way that the Concessionaire can be identified.

- 8.7.4. The Council may make changes to the Management Information which the Concessionaire is required to supply and shall give the Concessionaire at least one (1) month's written notice of any changes.

9. PERFORMANCE MONITORING

The Concessionaire shall comply with the performance monitoring requirements set out in Schedule 10 (Performance Regime).

10. BUSINESS CONTINUITY PLAN

10.1. The Concessionaire has prepared and submitted to the Council a Business Continuity Plan which details its procedures for providing the Services in the event of an emergency as part of its Final Tender and annexed to this Contract at Schedule 6 (Business Continuity Plan). The Concessionaire shall throughout the Contract Period:

10.1.1. maintain a BCP which has been approved by the Authorised Officer from time to time;

10.1.2. the Concessionaire shall test the BCP on a regular basis (and in any event not less than once every twelve (12) months) and shall send to the Council a written report summarising the results of each test and shall promptly implement any actions or remedial measures which the Council reasonably considers to be necessary as a result of those tests. The Council may require the Concessionaire to conduct additional tests of the BCP where the Council considers it necessary, including without limitation where there has been any change to the Services or any underlying business processes, or on the occurrence of any event that may increase the likelihood of the need to implement the BCP. If the Council requires the Concessionaire to perform an additional test, it shall give the Concessionaire written notice and the Concessionaire shall conduct the test in accordance with the Council's requirements. The Council shall bear the Concessionaire's costs of any such additional test unless the BCP fails the additional test in which case the Concessionaire shall bear the costs of the failed test; and

10.1.3. at the Council's request, participate in test(s) of the Council's business continuity plan having first been given at least one (1) month's written notice.

10.2. The Concessionaire acknowledges that the Council prepares its own business continuity plans for all its services. In order to prepare these the Council may request and the Concessionaire shall provide the Council with any reports, information, files, data minutes, electronic or other forms of records compiled, supplied or obtained in connection with the performance of the Services.

11. CHANGES

11.1. Changes to the Terms and Conditions

11.1.1. The Council and the Concessionaire are each entitled to proposed changes to the terms of this Contract and in particular the Council shall be entitled to issue directions which vary the Services to be carried out and/or the way in which the Services are provided (a "Change").

11.1.2. Where the Council wishes to instruct a Change it shall inform the Concessionaire by written notice (a "**Council Notice of Change**"), and where the Concessionaire wishes to instruct a Change it shall inform the Council by written notice (a "**Concessionaire Notice of Change**").

- 11.1.3. Where a Council Notice of Change is served the Concessionaire shall provide a document to the Council itemising the impact of the proposed Change on the Services within a reasonable timescale of the Concessionaire being served with the relevant Council Notice of Change (taking into consideration the complexity of the proposed Change) (an "**Impact Assessment**").
- 11.1.4. Where a Concessionaire Notice of Change is served the Concessionaire shall provide with such Concessionaire Notice of Change a document to the Council itemising the impact of the proposed Change on the Services (a "**Concessionaire Impact Assessment**").
- 11.1.5. The Council shall use its reasonable endeavours to ensure that the Council Notice of Change shall set out the proposed Change in sufficient detail to enable the Concessionaire to provide the Impact Assessment.
- 11.1.6. Subject to Condition 11.1.7, as soon as practicable after the Council receives the Impact Assessment and/or a Concessionaire Impact Assessment, the Council shall, if it desires to proceed with implementing the Change and acting reasonably, consider whether it wishes to proceed with the relevant Change and shall have due regard for the relevant issues set out in the Impact Assessment and/or Concessionaire Impact Assessment and, acting reasonably, shall incorporate such changes as are necessary to deal with such relevant issues in the Impact Assessment and/or Concessionaire Impact Assessment into the relevant proposal for Change and provide such document to the Concessionaire (a "**Council Change Decision**").
- 11.1.7. Nothing in this Condition 11.1 shall require the Council to accept (in whole or in part) any Change proposed by the Concessionaire.
- 11.1.8. If the Council, having considered the Impact Assessment and/or a Concessionaire Impact Assessment, considers that it does not wish to proceed with the Change, it shall inform the Concessionaire as soon as reasonably practicable having reached such determination.
- 11.1.9. If the Council issues a Council Change Decision, the Council and the Concessionaire shall record their agreement in respect of the matters set out in the Council Change Document by each signing the relevant Council Change Decision as soon as reasonably practicable of the Council Change Decision being issued to the Concessionaire, and upon such document has been signed by the both the Council and the Concessionaire or such other date as required by the Council (acting reasonably).

12. CONCESSION FEE

12.1. The Parties acknowledge and agree that the Concessionaire shall be free to commercially exploit the Services within the terms of this Contract and in doing so the Concessionaire agrees and acknowledges that from the Services Commencement Date it shall pay the Council the:

- 12.1.1. Guaranteed Payment (the "**Periodic Payment**"); and

- 12.1.2. the Excess Profit Share (the "**Annual Payment**"), together the ("**Concession Fee**"), in accordance with the provisions of this Condition 12 (Concession Fee).
- 12.2. The Parties shall comply with Schedule 2 (Concession Fee).
- 12.3. In relation to the Periodic Payment, within ten (10) Working Days of the end of each Payment Period, the Concessionaire shall submit to the Council a report setting out:
- 12.3.1. the Management Information; and
- 12.3.2. the calculation of the Periodic Payment, (the "**Periodic Payment Report**").
- 12.4. In relation to the Annual Payment, within ten (10) Working Days of the 30 April of each Year of the Contract Period, the Concessionaire shall submit to the Council a report setting out:
- 12.4.1. the Management Information; and
- 12.4.2. the calculation of the Annual Payment for the relevant Year, (the "**Annual Payment Report**").
- 12.5. On receipt of each Periodic Payment Report and Annual Payment Report, the Council shall consider and verify the information submitted by the Concessionaire, including in respect of the Periodic Payment or Annual Payment payable, within five (5) Working Days of receipt and either:
- 12.5.1. confirm its acceptance of the Periodic Payment Report or Annual Payment Report in writing, including the amount of the Periodic Payment or Annual Payment payable and issue the Concessionaire with an invoice; or
- 12.5.2. reject the Periodic Payment Report or Annual Payment Report (in full or in part) including any Periodic Payment or Annual Payment owed, in which case the Council shall submit a notice to the Concessionaire stating what matters are in dispute, including in respect of the Periodic Payment or Annual Payment, and the reason for the dispute (the "**Report Dispute Notice**") and the provisions of Conditions 12.7 and 12.8 shall apply.
- 12.6. Where the Council fails respond to the Periodic Payment Report or Annual Payment Report within five (5) Working Days and/or there is an undue delay in considering and verifying the Periodic Payment Report or Annual Payment Report, the Periodic Payment Report or Annual Payment Report shall be regarded as accepted and undisputed ten (10) Working Days after the date on which it is received by the Council.
- 12.7. Within ten (10) Working Days of the Concessionaire having received a Report Dispute Notice, the Concessionaire shall respond including setting out how any disputed amount was calculated.
- 12.8. The Parties shall meet as soon as practicable thereafter the receipt of the Concessionaire's response to the Report Dispute Notice and shall attempt to resolve the dispute amicably

between them. If the Parties are unable to reach agreement the matter shall be referred to the Dispute Resolution Procedure.

- 12.9. The Concessionaire shall pay any undisputed sums properly due to the Council within thirty (30) days of receipt of a valid invoice in respect of the Periodic Payment or Annual Payment in arrears.
- 12.10. For the second, third, fourth and fifth Years of the Contract Period (and sixth, seventh, eighth, ninth and tenth Years should the Contract Period be extended in accordance with the terms of this Contract) the Guaranteed Payment shall be adjusted by a proportion equivalent to the proportionate rise between the Index prevailing for the month prior to the Commencement Date and the Month prior to the first, second, third, fourth, fifth (and sixth, seventh, eighth, ninth, tenth anniversaries should the Contract Period be extended in accordance with the terms of this Contract) plus one per cent (1%).

13. VALUE ADDED TAX

- 13.1. Any sums payable by the Concessionaire to the Council are exclusive of any VAT.
- 13.2. The Concessionaire shall pay to the Council any VAT properly chargeable.

14. ASSIGNMENT AND SUB-CONTRACTING

- 14.1. Unless any Law states the contrary, the Council shall not be entitled to assign the benefit of this Contract or any part thereof without the prior written consent of the Concessionaire which shall not be unreasonably refused, withheld or delayed.
- 14.2. The Concessionaire shall not:
- 14.2.1. assign, transfer or novate this Contract or any part thereof or the benefit or advantage of this Contract or any part thereof; or
 - 14.2.2. sub-contract the provision of the Services or any part thereof to any person without the prior written consent of the Council, which consent shall be in the discretion of the Council and, if given, may be subject to conditions and shall not in any event relieve the Concessionaire of any liability or obligation under this Contract and the Concessionaire shall in any event be responsible for the acts, defaults or neglect of any sub-concessionaire or its employees, in all respects as if they were the acts, defaults or neglect of the Concessionaire and, without prejudice to the generality of the foregoing, provided that the Council shall be entitled to require as a condition of giving a consent to sub-contract, a direct deed of warranty and undertaking at the expense of the Concessionaire from the authorised sub-concessionaire to provide and carry out the part of the Services comprised in the authorised sub-contract.
- 14.3. No authorised sub-concessionaire shall assign transfer, novate or sub-contract the whole or any part of its sub-contract or the benefit or the advantage of the whole or any part of its sub-contract. The Concessionaire shall ensure that the terms of any authorised sub-contracting arrangement strictly prohibit any such activity by the sub- concessionaire.

15. CONTRACT MANAGEMENT

15.1. The Authorised Officer

- 15.1.1. Prior to the Effective Date the Council shall give notice to the Concessionaire of the name and designation of the Authorised Officer and shall forthwith give notice to the Concessionaire of any replacement of the Authorised Officer from time to time during the Contract Period or if any person ceases to be the Authorised Officer.
- 15.1.2. From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. As soon as any such appointment is made, the Authorised Officer shall give written notice thereof to the Concessionaire.
- 15.1.3. The functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Authorised Officer. The Concessionaire shall in no circumstances question the existence or extent of the authority of any person notified to the Concessionaire (whether orally or in writing) to be a replacement Authorised Officer, a deputy, assistant, representative or agent of the Authorised Officer.

15.2. The Contract Manager

- 15.2.1. The Concessionaire shall at all times during the Contract Period ensure that a suitably senior and competent person is appointed as the Contract Manager and is thereby empowered to act on behalf of the Concessionaire for all purposes connected with this Contract. Prior to the Effective Date the Concessionaire shall notify the Council of the name and contact details of its proposed Contract Manager. The Concessionaire shall immediately give notice of any subsequent proposed appointments with details of such person's qualifications, experience and training. Any person proposed to be appointed as Contract Manager must first be approved in writing by the Council, such approval not to be unreasonably withheld.
- 15.2.2. The Concessionaire shall inform the Council of the identity of any person proposed to act for any period as deputy for the Contract Manager before the start of that period. Any person proposed to be authorised to act as deputy for the Contract Manager must first be approved in writing by the Council, such approval not to be unreasonably withheld.
- 15.2.3. The Contract Manager or his appointed deputy shall be the authorised representative of the Concessionaire and as such is empowered on behalf of the Concessionaire for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Contract Manager or his deputy shall be deemed to have been given to the Concessionaire.
- 15.2.4. The Concessionaire shall ensure that at all times during the Contract Period:
 - 15.2.4.1. the Contract Manager or his appointed deputy is available to be contacted at all times between 9:00 and 17:00 on each Working Day;

- 15.2.4.2. there is a telephone number notified to the Authorised Officer in writing at which the Contract Manager or his authorised deputy may in emergencies be contacted at all times; and
 - 15.2.4.3. the Concessionaire shall liaise and co-operate and ensure that its Employees and supervisors shall liaise and co-operate with the Authorised Officer and comply with the Authorised Officers reasonable requests.
- 15.2.5. The Contract Manager shall inform the Council promptly and in writing of any instances of acts or omissions on the part of the Council or its employees which may prevent or hinder the Concessionaire from meeting its contractual obligations and the Council shall advise the Concessionaire of any action required to be taken by the Concessionaire in connection with such acts or omissions.

16. EMPLOYEES

16.1. The Concessionaire shall at all times during the Contract Period:

- 16.1.1. ensure that a sufficient number of competent Employees, qualified managers and senior staff are available to provide the Services to the Contract Standard (including during an Employee's holiday or absence through sickness or otherwise) together with a sufficient reserve of competent Employees to provide the Services during staff holidays or absence or other situations where the regular staff employed in the provision of the Services are absent or unavailable;
- 16.1.2. provide and maintain a suitably-qualified and experienced professional management team to manage and develop the Services and maintain or even increase standards of delivery; and
- 16.1.3. publish to the Council its staff training and development strategy, and an annual action plan, which are designed to ensure that all Personnel's skills are kept up-to-date and are developed to ensure that Services are provided to the required standard.

16.2. The Concessionaire shall:

- 16.2.1. prior to the Services Commencement Date and throughout the Contract Period, engage in and about the provision of the Services only such persons as are careful, skilled, honest, experienced, and trained to the reasonable satisfaction of the Council in the work which they are to perform;
- 16.2.2. in order to support and enhance the social and economic wellbeing of the Borough and its residents where the award of this Contract results in the creation of net new jobs, and where throughout the Contract Period net new jobs are created, the Concessionaire shall, where appropriate, advertise any such jobs via the Wandsworth Work Match Programme to support local resident access to employment opportunities;

- 16.2.3. ensure that every Employee before starting to provide any of the Services is made aware of:
- 16.2.3.1. the task or tasks which that person has to perform;
 - 16.2.3.2. all relevant provisions of this Contract;
 - 16.2.3.3. all relevant policies, rules, procedures and standards of the Council;
 - 16.2.3.4. all relevant rules, procedures and statutory requirements concerning health and safety at work and all applicable health and safety legislation;
 - 16.2.3.5. fire risks and fire precautions;
 - 16.2.3.6. the need to maintain the highest standards of hygiene, courtesy and consideration; and
 - 16.2.3.7. the need to recognise situations which may involve any actual or potential danger or personal injury to any person at any site or location, where possible, without personal risk, to make safe such situations and forthwith to report such situations to the Authorised Officer (and, where such site or location belongs to the Council, to the member of the Council's staff with responsibility for such site or location);
- 16.2.4. ensure that all Employees are at all times adequately supervised and properly perform their duties to the Contract Standard and are sufficiently skilled, trained and instructed with regard to all matters relevant to the Services;
- 16.2.5. prior to the Services Commencement Date and throughout the Contract Period keep the Council informed of any changes in managers and senior staff from time to time;
- 16.2.6. provide and ensure that all and any Employees, who are at any premises of the Council or meeting other persons in the course of the provision of the Services, shall wear such identification (including photographic identification) as may be specified by the Authorised Officer and shall disclose their identity and status as an Employee and shall not attempt to avoid doing so;
- 16.2.7. ensure that all Employees and its other personnel (and those of all Sub-Concessionaires) shall, if so required, sign in and out when visiting any of the Council's land or buildings;
- 16.2.8. ensure that staff engaged in the supervision of the Employees have a thorough knowledge of normal operating and emergency action procedures and all potential risk factors;
- 16.2.9. in respect of any and all Employees, obtain evidence of the Employee's right to work in the United Kingdom by:
- 16.2.10. requesting sight of the original copies of such documents as are listed within List A or List B of the Right to Work Checklist produced by the Home Office and complying with

the requirements of the Home Office's Employer's Guide to Right to Work Checks as amended and in force from time to time, and confirm on a regular basis (and not less than every six (6) months) that this has been undertaken and that any Employee working in the provision of the Services has the right to work in the United Kingdom; and

- 16.2.11. procure that where a Sub-Concessionaire is engaged by the Concessionaire to provide any part of the Services employs or engages an employee that such Sub-Concessionaire complies with the terms of **Conditions 16.2.1 to 16.2.9** as if the obligations of the Concessionaire were obligations of the Sub-Concessionaire.
- 16.3. The Concessionaire shall (as far as it is lawfully able to do so) in relation to each person whom it or any Sub-Concessionaire proposes to ask to provide Services:
 - 16.3.1. carry out a check with the Disclosure and Barring Service of the most detailed type possible in relation to the type of service which that person will be asked to provide, before that person shall be permitted to provide any services; and
 - 16.3.2. procure that any person in respect of whom convictions and/or cautions are disclosed shall not be engaged in the provision of the Services without the prior consent of the Council (which consent shall not be unreasonably withheld or delayed).
- 16.4. The Concessionaire shall maintain and apply a Child and Vulnerable Adult Safeguarding Policy which is consistent with the Council's equivalent. The Concessionaire shall provide a copy of such policy to the Council and shall inform the Council of all amendments and updates it makes to that policy.
- 16.5. Subject always to the terms of this Contract, the Concessionaire shall be entirely responsible for the engagement and conditions of its personnel and managers, and those of all Sub-Concessionaires, including, without limitation, the payment of remuneration.
- 16.6. The Concessionaire shall at all times comply with, and shall procure that all Sub-Concessionaires comply with, the Law and best practice in relation to:
 - 16.6.1. the processes followed and the decisions made in relation to the recruitment of Employees;
 - 16.6.2. the terms and conditions on which Employees are employed in relation to the provision of the Services;
 - 16.6.3. the management of Employees; and
 - 16.6.4. the termination of employment of Employeesand shall at the request of the Council and at its own expense provide such evidence of such compliance as the Council may reasonably require.
- 16.7. The Concessionaire has submitted a schedule of routine operations for the provision of the Services which is attached to this Contract at Schedule 8 (Schedule of Routine Operations) which

shall be available for reference by the Authorised Officer and the Employees at such place that the relevant Services are provided from.

- 16.8. All monies or other items of value found by any Employees at any of the Council's premises, shall be handed to the officer in charge of the premises, or the Authorised Officer, as soon as reasonably practicable; and a written receipt shall be provided by the Council.

17. Safeguarding Vulnerable Groups Act 2006

- 17.1. For the purposes of this Condition 17 (Safeguarding Vulnerable Groups Act 2006 (as amended)), “**Regulated Activity Provider**” and “**Regulated Activity**” shall have the meanings set out in the SVGA.

- 17.2. Where the Concessionaire is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity (as defined by the SVGA) provided under this Contract and for the purposes of the SVGA, the Concessionaire shall:

17.2.1. comply with all of its obligations under the SVGA including without limitation information sharing, DBS referral obligations and checking that a person is subject to monitoring;

17.2.2. ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the adults' barred list or the children's barred list, as appropriate;

17.2.3. monitor the level and validity of the checks under Condition 17.2.2 for each member of staff;

17.2.4. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he would not be suitable to carry out the Regulated Activity or who may otherwise present a risk to a recipient of the Services;

17.2.5. in accordance with the SVGA, refer information about any person providing the Regulated Activity to the DBS where it removes permission for such person to provide the Services (or would have, if such person had not otherwise ceased to provide the Services) because, in its opinion, such person has harmed or poses a risk of harm to a recipient of the Services;

17.2.6. immediately provide the Council with all information that the Council may reasonably require enabling the Council to verify that the Concessionaire has satisfied its obligations under this Condition 17 (Safeguarding Vulnerable Groups Act 2006 (as amended)) and the SVGA and immediately inform the Council if there is any reason to believe that any obligations under the SVGA are not being complied with in relation to the Services;

17.2.7. ensure that all personnel engaged in Regulated Activity act in accordance with the Inter-Agency Guidelines for their protection detailed at Schedule 11 (Councils' Inter-Agency Guidelines);

- 17.2.8. ensure that it, and all personnel involved in providing the Services, act in accordance with the Council's Check Before Contact Register Information Sharing Protocol attached at Schedule 12 (Check Before Contact Register Information Sharing Protocol);
- 17.2.9. ensure that all personnel working with or alongside children have regard to the need to safeguard and promote the welfare of children;
- 17.2.10. ensure that, in discharging its obligation under Condition 17.2.9, all personnel working with or alongside children have regard to the Secretary of State's *Statutory Guidance on Making Arrangements to Safeguard and Promote the Welfare of Children under section 11 of the Children Act 2004* and any further guidance issued by the Secretary of State pursuant to section 11 of the Children Act 2004;
- 17.2.11. carry out a check of DBS status annually of a random selection of at least ten percent (10%) of its Employees engaged in the Services who would be eligible for a three (3) year check and who are carrying out the Services;
- 17.2.12. maintain and keep a Child and Vulnerable Adult Safeguarding Policy which is consistent with the Councils' policy set out at Schedule 11 (Councils' Inter-Agency Guidelines) and updated from time to time;
- 17.2.13. ensure (as far as it is legally able to do so) that any personnel, including volunteers shall not work unsupervised with the customers until a satisfactory enhanced DBS check and barring list clearance have been obtained. This also applies to any personnel, including volunteers, who have access either electronically or in hard copy to customer records and information; and
- 17.2.14. ensure that it, and all personnel involved in providing the Services, act in accordance with the Councils' Check Before Contact Register Information Sharing Protocol attached at Schedule 12 (Check Before Contact Register Information Sharing Protocol).
- 17.3. The Concessionaire warrants that at all times for the purposes of this Contract it is appropriately registered in relation to all persons who are or will be employed or engaged by the Concessionaire in the provision of the Services, and that it has no reason to believe that any such person is barred from the provision of the Services in accordance with the provisions of the SVGA and any regulations made thereunder.
- 17.4. The Concessionaire acknowledges that the Council may, acting in accordance with the SVGA, disclose information in relation to an Employee where required to do so by the Independent Safeguarding Authority without consultation with the Concessionaire.

18. EQUAL OPPORTUNITIES, EMPLOYMENT AND HUMAN RIGHTS

- 18.1. The Concessionaire shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation contrary to the Equality Act 2010 or Public Interest Disclosure Act 1998 or any other statutory provision relating to discrimination in employment or the provision of services.

- 18.2. The Concessionaire shall, for purposes of ensuring compliance with Condition 18.1, in relation to the Employees, observe as far as possible the provisions of the Equality and Human Rights Commission's Code of Practice on Employment, and any other comparable statutory code, including but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.
- 18.3. The Concessionaire shall monitor the representation among Employees of persons:
- 18.3.1. of a different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics or successor body);
 - 18.3.2. of a different gender; and
 - 18.3.3. with a disability; having regard to the Council's procedures for monitoring representation among its own employees.
- 18.4. The Concessionaire shall twelve (12) months from the Services Commencement Date and annually thereafter submit a report to the Council demonstrating its compliance with Conditions 18.1, 18.2, and 18.3.
- 18.5. In addition to the report referred to in Condition 18.4, the Concessionaire shall provide such additional information as the Council may reasonably require for the purpose of assessing the Concessionaire's compliance with Conditions 18.1, 18.2, and 18.3.
- 18.6. The Concessionaire shall notify the Authorised Officer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Concessionaire under either the Equality Act 2010 or the Public Interest Disclosure Act 1998.
- 18.7. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Concessionaire's performance of this Contract being in contravention of either the Equality Act 2010 or the Public Interest Disclosure Act 1998, the Concessionaire shall, free of charge:
- 18.7.1. provide any information required in the timescale allotted;
 - 18.7.2. attend any meetings as required and permit Employees to attend;
 - 18.7.3. promptly allow access to and investigation of any documents or data deemed to be relevant;
 - 18.7.4. allow itself and any Employees to appear as witnesses in any ensuing proceedings; and
 - 18.7.5. co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 18.8. Where any investigation is conducted or proceedings are brought under either the Equality Act 2010 or the Public Interest Disclosure Act 1998 which arise directly or indirectly out of any act or omission of the Concessionaire, its agents, Sub-Concessionaires or Employees and where there is a finding against the Concessionaire in such investigation or proceedings, the

Concessionaire shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.

18.9. The Concessionaire shall in performing this Contract comply with the Human Rights Act 1998 as if the Concessionaire were a public authority within the meaning of section 6(3) of the Human Rights Act 1998.

18.10. In the event that the Concessionaire enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Concessionaire in terms substantially similar to those imposed on it pursuant to this Condition 17 (Equal Opportunities, Employment and Human Rights).

19. ACQUIRED RIGHTS DIRECTIVE, TUPE AND PENSIONS

The Parties agree that the provisions of Schedule 3 (TUPE and Pensions) shall apply to any Relevant Transfer of staff under this Contract.

20. HEALTH AND SAFETY

20.1. The Concessionaire shall at all times comply with and shall procure that its Employees and any sub-concessionaire shall comply with:

20.1.1. all applicable health and safety precautions necessary (whether required by legislation or not) for the protection of itself and all sub-concessionaires and concerning works and fire prevention and, to the extent applicable to its activity, that of Council's employees and any other person affected, including members of the public;

20.1.2. the Council's own health and safety policy; and

20.1.3. the Concessionaire's health and safety policy and manual.

20.2. The Concessionaire shall maintain and review its health and safety policy and safe working procedures as often as may be necessary in light of changing legislation, working practices or any other factor, and shall notify the Council in writing of such revision. Prior to the Services Commencement Date and from time to time during the Contract Period the Concessionaire shall provide the Council with satisfactory evidence of the policy and arrangements in place and copies of risk assessments stating the risk control measures employed and any other health and safety documentation or information deemed reasonably necessary by the Council prior to and/or during the Contract Period.

20.3. The Concessionaire shall have in place throughout the Contract Period emergency operating procedures, including accident procedures, which procedures are to be communicated to all Employees and periodically tested. The Concessionaire shall maintain a record of all accidents, injuries, fatalities and dangerous or potentially dangerous incidents.

20.4. If at any time the Authorised Officer reasonably considers that the Concessionaire has failed to comply in any material respect with any provision of this Condition 20 (Health and Safety) the Authorised Officer shall be entitled to do either or both of the following:

20.4.1. to instruct the Concessionaire to cease to carry out the Services (or a specified part of the Services) either immediately or within a specified period of time; and/or

20.4.2. to instruct the Concessionaire to take specified steps to secure compliance, or to comply with advice or requirements of the Health and Safety Executive or a proper officer thereof,

and the provisions of Condition 37 (Default in Performance) and/or Condition 38 (Termination) may be applied without prejudice to any other rights the Council may have against the Concessionaire. Any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable time spent by the Council's officers as a result of the default or failure, may be deducted from any sums due (or to become due) to the Concessionaire under this Contract, or shall be recoverable from the Concessionaire by the Council as a debt.

20.5. The Concessionaire shall inform the Authorised Officer forthwith upon complying with any such instruction given under Condition 20.4 and if the Authorised Officer subsequently confirms in writing that he/she is reasonably satisfied that the Concessionaire has so complied, the Concessionaire shall recommence to provide the Services.

20.6. For the avoidance of doubt, all instructions given and works undertaken in order to secure compliance with this Condition 20 (Health and Safety) shall be deemed not to require or involve an amendment to the provisions of this Contract under Condition 3 (Amendments) or a change under Condition 11 (Change), or under any other provision of this Contract. The Concessionaire shall not be entitled to any payment either for services not carried out whilst complying with such an instruction, or for any additional work or accumulation of tasks or variation of the programme arising out of, or in connection with, any such instruction.

20.7. The Concessionaire will indemnify the Council against any breach of this Condition 20 (Health and Safety).

21. OPERATING MANUAL

21.1. The Concessionaire has prepared and submitted to the Council an Operating Manual which details its procedures for providing the Services as part of its Final Tender and annexed to this Contract at Schedule 7 (Operating Manual). The Concessionaire shall throughout the Contract Period maintain and update an operating and maintenance manual setting out the Concessionaire's procedures for providing the Services.

22. [PREMISES]⁵

23. [UTILITIES COSTS AT THIRD PARTY PREMISES]⁶

- 23.1. The Parties acknowledge that the Concessionaire is responsible for paying the costs of all utilities (including, without limitation, water, drainage, gas and electric usage) (the “**Utilities Costs**”) at the Third Party Premises and shall be invoiced for the same by the relevant utility companies.
- 23.2. The Council agrees to reimburse the Concessionaire for the Utilities Costs incurred at the Third Party Premises in accordance with the provisions of this Condition 23.
- 23.3. Within [fourteen (14) days] of the end of each Quarter, the Concessionaire shall deliver to the Council an invoice for the amount of the actual Utilities Costs incurred in respect of the Third Party Premises in that Quarter supported by:
- 23.3.1. copies of all invoices received for the Utilities Costs at the Third Party Premises. Such invoices must be based on meter readings and shall not be estimates; and
- 23.3.2. evidence of defrayal by the Concessionaire of those Utilities Costs.
- 23.4. On receipt of the invoice submitted pursuant to Condition 23.3, the Council shall consider and verify that invoice in a timely fashion.
- 23.5. The Council shall pay all elements of a valid invoice in full where there is no dispute as to its contents within thirty (30) days of receipt.
- 23.6. If the Council disputes any matter referred to in the Concessionaire’s invoice issued pursuant to Condition 23.3, it shall submit a notice to the Concessionaire within fourteen (14) days of receipt of the invoice stating what matters are in dispute, including in respect of the Utilities Costs, and the reason for the dispute (a “**Utilities Cost Dispute Notice**”) and the provisions of Conditions 23.8 and 23.9 shall apply.
- 23.7. Where the Council fails to comply with Condition 23.4 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as accepted and undisputed twenty one (21) days after the date on which it is received by the Council.
- 23.8. Within twenty one (21) days of the Concessionaire having received a Utilities Costs Dispute Notice, the Concessionaire shall respond including setting out how the disputed amount was calculated.
- 23.9. The Parties shall meet as soon as practicable thereafter the receipt of the Concessionaire’s response to the Utilities Costs Dispute Notice and shall attempt to resolve the dispute amicably between them. If the Parties are unable to reach agreement the matter shall be referred to the Dispute Resolution Procedure.]

⁵ Note to Tenderers: It is envisaged that leases will be drafted to the successful tenderer for each Lot in the same format as the existing Leases and based on the heads of terms which have been uploaded to the Portal subject to modernisation.

⁶ Note to Tenderers: This clause is only applicable to Lot 1.

24. EQUIPMENT

Council's Equipment

- 24.1. The inventory of Council's Equipment is at []⁷ ("**Inventory**").
- 24.2. The Council shall, at no cost to the Concessionaire, make available to the Concessionaire from the Services Commencement Date the items of Council's Equipment.
- 24.3. The Council's Equipment shall vest in and remain the property of the Council and shall be delivered up at the end of the Contract Period or earlier termination for any reason in good and substantial repair and condition except that the Concessionaire shall not be obliged to put the Equipment in any better state of repair or condition than it was in at the Services Commencement Date. The Concessionaire shall be responsible for the maintenance and replacement of the Council's Equipment at its own expense except where it is expressly stated that any such maintenance and/or replacement shall be carried out at the Council's expense.
- 24.4. Where an item of Council's Equipment has been replaced in accordance with Condition 24.9 below, the replacement item shall become Council Equipment and shall be delivered up to the Council in accordance with this Condition 23.
- 24.5. The Concessionaire shall be entitled to reject any item of Council Equipment which is in disrepair, obsolete, unsafe or no longer reliable, effective or fit for purpose for the purpose for which it was intended as at the Services Commencement Date. Subject to that, the Council does not guarantee, warrant or give any assurances as to the sufficiency, age, condition or state of repair of any item of Council Equipment and the Concessionaire shall be deemed to have carried out its own inspections and made its own assessment of the Council Equipment prior to the Services Commencement Date and to accept the Council Equipment as seen.
- 24.6. The Council Equipment may only be used for the purposes of delivering the Services.
- 24.7. At any time during the Contract Period the Council may, upon reasonable notice to the Concessionaire, carry out an inspection of the Equipment for the purposes of verifying the Inventory and/or ensuring that the Concessionaire is complying with its obligations under this Condition 23.

Concessionaire Equipment

- 24.8. The Concessionaire shall, at its own cost, provide and supply in good and substantial repair and condition all items of Concessionaire Equipment.

Maintenance and Repair

- 24.9. The Concessionaire shall, at its own expense, repair or replace the Equipment as necessary throughout the Contract Period. For the purposes of this Condition 24.9 the expression "as necessary" means that the Concessionaire shall repair or replace the item of Equipment:

⁷ Note to Tenderers: The Inventory will be provided following contract award.

- 24.9.1. when it is damaged or broken in a material way, however caused;
- 24.9.2. when it is in poor condition due to wear and tear and its appearance reflects detrimentally on the quality of Services required to be provided under this Contract;
- 24.9.3. when it is used up;
- 24.9.4. when it is no longer safe or when a manufacturer's recommendation, Law, code of practice or guidance provides that it is no longer likely to be safe;
- 24.9.5. when it is no longer reliable or effective; when it is no longer fit for the purpose for which it was provided or intended; and/or
- 24.9.6. when it is commonly considered to be outdated.

The tests set out in the above list shall be agreed and applied reasonably by the Parties. The Concessionaire shall only be required to replace an item of Equipment pursuant to this Condition 24.9 on a "like for like" basis, but it may replace the item of Equipment (at its discretion) with an item of equipment of an equivalent or higher specification or value.

End of Contract Period

- 24.10. At the end of the Contract Period the Concessionaire shall offer to the Council for sale any item of Concessionaire Equipment which is not Council Equipment, which shall for the avoidance of doubt remain the property of the Council, on a first refusal basis and at Net Book Value. If any of the Concessionaire Equipment is encumbered by a lease/hire, the Concessionaire shall ensure that the benefit and burden of such arrangements can be assigned to the Council or to any new concessionaire at the Council's request and on terms no less favourable than enjoyed by the Concessionaire.
- 24.11. In the event of dispute as to the Net Book Value of any item the matter shall be referred to the Dispute Resolution Procedure and if necessary the Expert and during such process the item of Concessionaire Equipment in question shall remain subject to the Council's right of first refusal.
- 24.12. The Concessionaire shall update the Inventory at least every twelve (12) months during the Contract Period and provide a copy of the Inventory upon reasonable request by the Council. In addition, the Concessionaire shall provide the Council with a final copy of the Inventory (the "**Final Inventory**") three (3) months prior to the end of the Contract Period. The Final Inventory shall contain details of the Net Book Value of all items of Concessionaire Equipment.
- 24.13. Within two (2) weeks of receipt of the Final Inventory, the Council shall notify the Concessionaire of the items it wishes to purchase and if no such notification is received by the Concessionaire in respect of any item of Concessionaire Equipment the Concessionaire may treat that item of Concessionaire Equipment as released from the obligation to sell it to the Council.

25. INSTRUCTIONS AND NOTICES

- 25.1. All instructions from the Authorised Officer with regard to this Contract shall be issued to the Concessionaire in writing or, if given verbally, shall be confirmed in writing within ten (10) Working Days in accordance with the provisions of this Condition 25. Unless other means are

agreed with the Authorised Officer, the Concessionaire shall use similar means for his written communication with the Authorised Officer.

25.2. All communications whether oral or written between the Concessionaire and the Authorised Officer, or between the Concessionaire and any third party on behalf of the Authorised Officer, shall be conducted in the English language.

25.3. All notices under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served by sending the same by first class post, e-mail or by hand, or leaving the same at:

Details	Concessionaire	Council
Name	[]	[]
Address	[]	[Wandsworth Council, Town Hall, Wandsworth High Street, London SW18 2PU]
Contact Number	[]	[]
Email address	[]	[]

25.4. Either Party to this Contract (and either representative) may change its details outlined in the table above by prior notice to the other Party.

25.5. Notices given by email shall be deemed received:

25.5.1. within two (2) hours after sending, if sent on a Working Day, between the hours of 09:00 and 16:00; or

25.5.2. by 11:00 on the next Working Day, if sent after 16:00 on a Working Day but before 09:00 on the next Working Day.

25.6. Notices given by post shall be effective upon the earlier of actual receipt or five (5) Working Days after mailing.

25.7. Notices delivered by hand shall be effective upon delivery.

26. DATA PROTECTION

26.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Concessionaire is the Processor unless otherwise specified in Schedule 5 (Processing, Personal Data and Data Subjects). The only processing that the Processor is

authorised to do is listed in Schedule 5 (Processing, Personal Data and Data Subjects) by the Controller and may not be determined by the Processor.

- 26.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 26.3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - 26.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 26.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the delivery of the Services;
 - 26.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 26.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 26.4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - 26.4.1. process that Personal Data only in accordance with Schedule 5 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required to process the Personal Data otherwise by Law, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 26.4.2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - 26.4.2.1. nature of the data to be protected;
 - 26.4.2.2. harm that might result from a Data Loss Event;
 - 26.4.2.3. state of technological development; and
 - 26.4.2.4. cost of implementing any measures;
 - 26.4.3. ensure that:
 - 26.4.3.1. the Processor Personnel do not process Personal Data except in accordance with this Contract;
 - 26.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any of Processor Personnel who have access to the Personal Data and ensure that they:

- 26.4.3.2.1. are aware of and comply with the Processor's duties under this Condition 26 (Data Protection);
 - 26.4.3.2.2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - 26.4.3.2.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - 26.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 26.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - 26.4.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - 26.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
 - 26.4.4.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - 26.4.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - 26.4.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 26.5. Subject to Condition 26.6, the Processor shall notify the Controller immediately if it:
 - 26.5.1. receives a Data Subject Request (or purported Data Subject Request);
 - 26.5.2. receives a request to rectify, block or erase any Personal Data;
 - 26.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 26.5.4. receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 26.5.5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

- 26.5.6. becomes aware of a Data Loss Event.
- 26.6. The Processor's obligation to notify under Condition 26.5 shall include the provision of further information to the Controller in phases, as details become available.
- 26.7. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Condition 26.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 26.7.1. the Controller with full details and copies of the complaint, communication or request;
 - 26.7.2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 26.7.3. the Controller at its request, with any Personal Data it holds in relation to a Data Subject;
 - 26.7.4. assistance as requested by the Controller following any Data Loss Event;
 - 26.7.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 26.8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Condition. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
- 26.8.1. the Controller determines that the processing is not occasional;
 - 26.8.2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 26.8.3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 26.9. The Processor shall allow for audits of its data processing activity by the Controller or the Controller's designated auditor for the purpose of demonstrating compliance by the Processor with their obligations under the Data Protection Legislation.
- 26.10. If an audit reveals a material non-compliance by the Processor with its obligations under Data Protection laws or a breach by the Supplier of this Condition 26 (Data Protection) the Processor shall pay the reasonable costs of the Controller or its auditors, of the audit or inspection.
- 26.11. The Processor shall designate a data protection officer if required by the Data Protection Legislation.
- 26.12. Before allowing any Sub-processor to process any Personal Data related to this Contract the Processor must:

- 26.12.1. notify the Controller in writing of the intended Sub-processor and processing;
- 26.12.2. obtain the written consent of the Controller;
- 26.12.3. enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Condition 26 (Data Protection) such that they apply to the Sub-processor; and
- 26.12.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

26.13. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

26.14. The Controller may, at any time on not less than thirty (30) Working Days' notice, revise this Condition by replacing it with any applicable controller to processor standard conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

26.15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

26.16. The Concessionaire shall indemnify and keep indemnified the Council in respect of all Losses suffered or incurred by, awarded against or agreed to be paid by the Council arising from or in connection with:

- 26.16.1. any breach by the Concessionaire of any of its obligations under this Condition 26 (Data Protection); or
- 26.16.2. the Concessionaire (or any person acting on its behalf) acting outside or contrary to the lawful processing instructions of the Council in respect of the processing of Personal Data.

26.17. This Condition 26 (Data Protection) is intended to apply to the allocation of liability for Losses as between the Parties arising from or in connection with those circumstances set out at Condition 26.16.1 and 26.16.2, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Legislation to the contrary except:

- 26.17.1. to the extent not permitted by applicable Law (including Data Protection Legislation); and
- 26.17.2. that it does not affect the liability of either Party to any Data Subject.

27. FREEDOM OF INFORMATION

27.1. The Concessionaire acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council to enable the Council to comply with its information disclosure obligations.

- 27.2. The Concessionaire shall and shall procure that any of its affiliates, Employees, any sub-concessionaire and agents and its or their directors, officers and employees shall:
- 27.2.1. notify the Council of all requests for information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a request for information;
 - 27.2.2. provide the Council with a copy of all information in its possession or power in the form that the Council requires within two (2) Working Days (or such other period as the Council may specify) of the Council's request; and
 - 27.2.3. provide all necessary assistance reasonably requested by the Council to enable the Council to respond to the request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 27.3. The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR (as applicable).
- 27.4. In no event shall the Concessionaire respond directly to a request for information unless expressly authorised in writing to do so by the Council (and the Concessionaire shall procure that none of its affiliates, Employees, any sub-concessionaire and agents and its or their directors, officers and employees shall respond directly to a request for information).
- 27.5. The Council will use reasonable endeavours to consult with the Concessionaire regarding any potential disclosure of information concerning the Concessionaire or the Services under the FOIA or the EIR. To the extent that the Council is unable to consult with the Concessionaire (despite having used reasonable endeavours), the Council shall take reasonable steps to give the Concessionaire advanced notice of disclosure, or failing that, to draw the disclosure to the Concessionaire's attention after any such disclosure.

28. CONFIDENTIALITY

- 28.1. The Concessionaire shall not, without the prior written consent of the Authorised Officer, during the Contract Period or at any time thereafter make use of for its own purposes, or disclose to any person (except as may be required by law), Confidential Information or, without limitation, Council Data, provided by or on behalf of the Council or which the Concessionaire generates pursuant to or in connection with this Contract, all of which information shall be deemed to be confidential.
- 28.2. The Concessionaire's obligations as to confidentiality shall survive any termination of this Contract.
- 28.3. The Concessionaire shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Concessionaire of this Condition 28.

29. RECORDS

- 29.1. The Council shall retain title to all Council Data supplied by the Concessionaire. The Concessionaire shall carefully safeguard all Council Data in relation to their security, authenticity, confidentiality and accuracy throughout the Contract Period and either pass all Council Data to the Council or, if so directed by the Authorised Officer, ensure their confidential destruction at the end of the Contract Period or earlier if the Authorised Officer reasonably considers that their lodging with the Concessionaire is no longer necessary for the fulfilment of the Contract. The return or destruction of such records shall be at the Concessionaire's expense.
- 29.2. The Concessionaire shall maintain adequate records, in accordance with best professional practice, of all work carried out in respect of the Services. These records shall be kept in a secure and confidential manner and shall be made available for inspection on demand during normal business hours by the Authorised Officer and/or the Council's internal and/or external auditors as and when they shall require.
- 29.3. The Concessionaire shall maintain adequate procedures to reconstruct Council Data that is in computer readable form swiftly in the event of site disaster or systems failure. The Concessionaire shall co-operate with the Council and its consultants in any enquiries they may make to be satisfied that such arrangements are adequate and shall comply with any reasonable requirements by the Council in connection with this.
- 29.4. The Concessionaire shall at all times during the currency and following termination of this Contract provide the Authorised Officer, the Council's internal and/or external auditors and the Local Government Ombudsman with full access on demand during normal business hours to examine and copy all correspondence, records, documentation and files created in the provision of the Services, whether stored on paper, microfiche, computer software or other medium.
- 29.5. The Concessionaire shall comply with all requests for assistance from the Council in respect of audits and other inspections relating to the Best Value Duty and the performance of the Services.
- 29.6. The Concessionaire shall provide whatever assistance the Authorised Officer may reasonably require in exercising any right under this Condition 28 including, but not limited to, giving the Authorised Officer access to the Concessionaire's premises.
- 29.7. The Concessionaire shall notify the Council of any proposed changes to its corporate/group structure and any change in the identity of its parent company(s). In the event that the Concessionaire notifies the Council of a proposed change to its corporate/group structure which, in the Council's opinion, is to be made for purposes other than a bona-fide internal re-organisation and which would have the effect in the Council's opinion of amounting to the award of a new contract in contravention of the requirements of the Public Contracts Regulations 2015 (or any amendment or re-enactment thereof) then the Council shall have the right to object to the proposed change. In the event that the change to the Concessionaire's corporate/group structure is to proceed despite the Council's objection, the Concessionaire shall immediately notify the Council and the Council shall have the right to terminate this Contract without loss to the Council or liability to the Concessionaire.

30. CHANGE IN LAW

- 30.1. The Concessionaire shall take all steps necessary to ensure that the Services are delivered and performed in accordance with the terms of this Contract and all Law following any Change in Law.
- 30.2. The Concessionaire acknowledges and agrees that the Concessionaire shall not be entitled to:
- 30.2.1. be relieved from any of its obligations under this Contract; or
 - 30.2.2. any payment or other form of compensation from the Council,
- as a result of the occurrence of a Change in Law.

31. INTELLECTUAL PROPERTY RIGHTS

- 31.1. The Concessionaire shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Council or its licensors, including:
- 31.1.1. the format and content of the documentation comprising the Contract;
 - 31.1.2. Council Data howsoever and wherever stored and processed by the Concessionaire; and
 - 31.1.3. all documents and drawings prepared and provided by the Council to the Concessionaire in connection with the performance of the Services,
- and the Concessionaire shall make use of the above solely to the extent provided and upon the terms of this Contract and for the purposes of providing the Services.
- 31.2. Any goodwill pertaining to or arising from the use of the Intellectual Property Rights shall at all times inure and accrue to the exclusive benefit of the Council absolutely.
- 31.3. The Concessionaire shall not in connection with this Contract use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights of the Council and the Concessionaire shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses which the Council may sustain, incur or be put to by reason or in consequence directly or indirectly of any breach of this provision (whether wilful or inadvertent) and against the payment of any royalties or other monies which the Council may have to make to any person or body entitled to patent rights or any other intellectual property rights in respect of any process, article, matter, or thing used, manufactured, supplied or delivered by the Concessionaire in connection with the Contract.
- 31.4. Except as expressly set out in this Contract, the Council shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Concessionaire or its licensors, including the Intellectual Property Rights created by the Concessionaire independently of this Contract, which are or will be used before or during the Contract Period for providing the Services.

32. PAYMENTS TO THE COUNCIL/INTEREST ON LATE MONIES/CHARGES

- 32.1. All monies received by the Concessionaire which are due to the Council shall be remitted to the Council within two (2) Working Days of receipt together with a description of the source of the monies, in such form and containing such details as prescribed by the Authorised Officer from time to time.
- 32.2. Where the Concessionaire fails to pay any monies to the Council before the time stated by the Authorised Officer the Concessionaire shall be liable to pay to the Council interest at the rate of four per cent (4%) above National Westminster Bank Plc's base rate for the time being per annum pro rata for each day or part thereof until the monies are paid to the Council. If the said base rate is abolished or should otherwise cease to exist then it shall be replaced in this Contract by the nearest comparable rate which, in the event of dispute, shall be determined by the Expert in accordance with Condition 41.
- 32.3. Except where expressly authorised by this Contract or where the Authorised Officer has given his/her express written authority or written instructions to the contrary, the Concessionaire shall not make any charges to the other party to any transaction forming part of the Services in respect of any work carried out by the Concessionaire pursuant to this Contract.

33. PROBITY AND INDUCEMENTS

- 33.1. The Concessionaire warrants that in entering this Contract it has not committed any Prohibited Act.
- 33.2. The Concessionaire shall:
- 33.2.1. promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Concessionaire in connected with the performance of this Contract;
 - 33.2.2. have and maintain its own policies and procedures including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the requirements of the Bribery Act 2010;
 - 33.2.3. immediately notify the Council in writing if a foreign public official (as defined in section 7(2) of the Bribery Act 2010) becomes an officer or employee of the Concessionaire or acquires a direct or indirect interest in the Concessionaire (and the Concessionaire warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract);
 - 33.2.4. within three (3) months of the date of this Contract, and annually thereafter, certify to the Council in writing signed by the Contract Manager compliance with this Condition 33. The Concessionaire shall provide such supporting evidence of compliance as the Council may reasonably request.

33.3. If the Concessionaire or any sub-concessionaire (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Council shall be entitled to act in accordance with Conditions 33.3.1 to 33.3.5 below:

33.3.1. if a Prohibited Act is committed by the Concessionaire or by an Employee not acting independently of the Concessionaire, then the Council may terminate this Contract by giving notice to the Concessionaire;

33.3.2. if the Prohibited Act is committed by an Employee of the Concessionaire acting independently of the Concessionaire, then the Council may give notice to the Concessionaire of the termination of this Contract and this Contract will terminate, unless within thirty (30) days of receipt of such notice the Concessionaire terminates the Employee's employment and (if necessary) procures the provision of such part of the Services by another person;

33.3.3. if the Prohibited Act is committed by a sub-concessionaire or by an employee of that sub-concessionaire not acting independently of that sub-concessionaire, then the Council may give notice to the Concessionaire of the termination of this Contract and this Contract will terminate, unless within thirty (30) days of receipt of such notice the Concessionaire terminates the relevant sub-contract and procures the operation of such part of the Services by another person;

33.3.4. if the Prohibited Act is committed by an employee of a sub-concessionaire acting independently of that sub-concessionaire, then the Council may give notice to the Concessionaire of the termination of this Contract and this Contract will terminate, unless within thirty (30) days of receipt of such notice the sub-concessionaire terminates the employee's employment and (if necessary) procures the operation of such part of the Services by another person; or

33.3.5. if the Prohibited Act is committed by any other person not specified in Condition 33.3.1 to Condition 33.3.1 above, then the Council may give notice to the Concessionaire of the termination of this Contract and this Contract will terminate unless within thirty (30) days of receipt of such notice, the Concessionaire procures the termination of such person's employment and of the appointment of their employer (where not employed by the Concessionaire or the sub-concessionaire) and (if necessary) procures the operation of such part of the Services by another person.

33.4. Any notice of termination under this Condition 33 shall specify:

33.4.1. the nature of the Prohibited Act;

33.4.2. the identity of the party whom the Council believes has committed the Prohibited Act; and

33.4.3. the date on which this Contract will terminate, in accordance with the applicable provision of this Condition 33.

- 33.5. Any termination under Condition 33.3 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council.
- 33.6. The Concessionaire shall not, whether itself or by any partner or director engaged in the provision of the Services, or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any other form of money, taking or reward, collection, or charge for any part of the Services other than charges properly approved by the Council's Head of Audit in accordance with the provisions of this Contract.
- 33.7. The Concessionaire shall immediately report to the Council's Head of Audit any attempt at bribery, corruption or improper conduct which comes to the Concessionaire's attention in connection with the Services. Such report shall be made verbally or by e-mail in the first instance, followed by written confirmation. The Concessionaire shall co-operate with, and provide statements or other evidence required by, the Council, its internal auditors and external auditors, the police or any other competent authority responsible for investigating any possible irregularities connected with this Contract.
- 33.8. If the Concessionaire shall become aware of, or suspect (or ought reasonably to have become aware of, or suspected) any irregularity with regard to any transaction involving the Council, the Concessionaire shall immediately notify details of that irregularity to the Council's Head of Audit, whether or not the Concessionaire is currently instructed in the matter concerned.
- 33.9. The Concessionaire shall maintain a policy and procedure for "whistle blowing" and shall take all reasonable steps to ensure that all of its personnel engaged in the provision of the Services are aware of and encouraged to apply and follow in relevant circumstances such policy and procedure.

34. LIABILITY AND INDEMNITY

- 34.1. Nothing in this Contract excludes or limits the liability of the Concessionaire for Losses incurred by the Council as a result of the Data Protection Legislation where the Concessionaire is at fault, as set out in Condition 26.16.
- 34.2. The limitations of liability set out in this Condition 34 shall not apply to any liability of either Party for death or personal injury caused by that Party's negligence.
- 34.3. To the extent permitted by the Unfair Contract Terms Act 1977, the Council shall not be liable for any loss or damage (except the negligence of the Council, its officers or employees) and the Council shall in no circumstances be liable to the Concessionaire for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses, or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Contract.
- 34.4. Subject to Conditions 34.2 and 34.3, the aggregate liability of the Council in respect of all causes of action, loss, damage or liability (whether for breach of contract, in negligence or for any other tort under statute or otherwise) arising out of or in connection with this Contract shall not exceed the lesser of:

- 34.4.1. the amount that the Council paid the Concessionaire in the preceding twelve (12) month period; or
- 34.4.2. five million pounds (£5,000,000.00) in the aggregate.
- 34.5. Without prejudice to the generality of this Condition 34 the Parties' liability to one another in respect of loss or damage to any property of any nature whatsoever shall include an obligation to reimburse all costs and expenses reasonably incurred by the other in the re-instatement or replacement of any such property, whether or not such re-instatement or replacement results in an improvement of or to the property so lost or damaged.
- 34.6. Subject to Conditions 36.2, 36.3 and 34.7 the maximum aggregate liability of the Concessionaire under this Contract (whether in contract, tort (including negligence), breach of statutory duty or otherwise) shall be limited in aggregate per year to:
- 34.6.1. where under the terms of Condition 35 the Concessionaire is obliged to hold insurance in respect of the matter from which the liability arises, the insurance levels set out in Condition 35;
- 34.6.2. in respect of matters for which the Concessionaire is not obliged to hold insurance under the provisions of Condition 35, five million pounds (£5,000,000.00).
- 34.7. The limitation of liability set out in Condition 34.6 shall not apply to any liability of the Concessionaire arising pursuant to Conditions 18.8, 20.7, 26.16, 28.3, 39.5.3 and paragraphs [2.2, 2.6, 2.7, 2.9.2.2 and 2.10]⁸ of Schedule 3 (TUPE and Pensions) of this Contract.
- 34.8. The Concessionaire's liability to the Council under Condition 34.6 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Parties whether under the common law principles of contract, equity or tort, under statute or as expressly provided in this Contract and shall not (without limitation) prejudice the Council's right to enforce at any time and in any manner whatsoever any bond, parent company guarantee or sub-concessionaire warranty.

35. FORCE MAJEURE

- 35.1. Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party nor incur any liability to the other Party for any Losses incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by the occurrence of that Force Majeure Event. The Council shall not be entitled to terminate this Contract for a Performance Default if such Performance Default arises from a Force Majeure Event, (but without prejudice to Clause 38 (Termination for Continuing Force Majeure)).

⁸ Note to Tenderers: This will be updated at the final tender stage.

- 35.2. A Party may not claim relief if the Force Majeure Event is attributable to its wilful act or omission, neglect or failure to take reasonable precautions or make reasonable effort to prevent against the Force Majeure Event.
- 35.3. On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 35.4. As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract.
- 35.5. The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Parties shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 35.6. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 35.7. The Concessionaire shall maintain the Business Continuity Plan in accordance with Good Industry Practice and provide the Council with each iteration of the Business Continuity Plan for approval.

36. INSURANCE

- 36.1. Without prejudice to the Council's rights under this Contract, the Concessionaire shall, during the Contract Period, take out with reputable insurers and maintain or procure the maintenance of such policies of insurance as may be necessary to insure and indemnify the Concessionaire against all manner of risks which might arise in connection with the Concessionaire's performance of its obligations under this Contract (without limitation) in respect of the following risks:
- 36.1.1. employers' liability including (without limitation) personal injury or death of any person arising under a contract of service with the Concessionaire and/or arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969. Such insurance cover shall be not less than ten million pounds (£10,000,000) in respect of any one (1) incident;
- 36.1.2. public liability and occupiers' liability - such insurance cover shall be not less than five million pounds (£5,000,000) in respect of any one (1) incident; and

- 36.1.3. such other risks as may from time to time be reasonably required by the Council.
- 36.2. The policies of insurance shall have the interest of the Council endorsed (or an indemnity to principal clause) on the policy and the Concessionaire shall duly pay all premiums therefore and produce to the Council on request receipts therefor and shall not do or suffer or permit anything to be done which might prejudice the policy.
- 36.3. All monies which may at any time be received or receivable under any such insurance shall be applied in replacing or repairing the item of Equipment lost or other items, damaged or destroyed or in such other manner as the Council may direct.
- 36.4. The Concessionaire shall upon request by the Authorised Officer disclose to the Authorised Officer all such policies of insurance, cover notes, premium receipts or other documents as the Authorised Officer may require from time to time and shall, if so requested furnish the Authorised Officer with copies of any such documents.
- 36.5. The Authorised Officer shall be entitled to notify the Concessionaire in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with the Conditions and to require the Concessionaire to effect such insurance as will so comply. Upon receipt of such notice, the Concessionaire shall forthwith procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may him/herself cause such insurance to be effected whereupon the Concessionaire shall pay to the Council such sum as the Authorised Officer shall certify as being the cost to the Council of effecting such insurance.
- 36.6. The Concessionaire shall at the request of the Authorised Officer, in the places and in a form approved by the Authorised Officer, arrange for notices to be permanently displayed giving information as to how insurance claims in respect thereof may be made.
- 36.7. The Concessionaire shall deal with any claims received from whatever source in a prompt, courteous and efficient manner. The Concessionaire shall acknowledge receipt of any claim within seven (7) days of receipt and shall pass full details of any claim to its insurers within twenty one (21) days of receipt or within such shorter time as may be required under the terms of the relevant insurance. The Concessionaire shall keep a written record of all claims received and of the action taken in relation to such claims. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times. The Concessionaire shall notify the Authorised Officer in writing within seven (7) days of all claims received and of all steps taken in response thereto.
- 36.8. The provisions of Condition 36.7 is without prejudice to any provisions concerning claims set out in these Conditions or the Schedules.
- 36.9. The Concessionaire shall ensure that any sub-concessionaires of the Concessionaire maintain like insurance cover to that required to be maintained by the Concessionaire under this Contract and such other insurance cover as may from time to time be reasonably required by the Council.

37. DEFAULT IN PERFORMANCE

37.1. In the event that any amount remitted pursuant to Condition 32.1 to the Council remains unpaid by the Concessionaire after thirty (30) days, the Council shall notify the Concessionaire in writing giving the Concessionaire five (5) further Working Days to pay such an amount. If the amount remains unpaid, the Council shall be entitled to charge interest from the date on which the thirty (30) day period expired to the Working Day before payment is made at the Prescribed Rate.

37.2. Without prejudice to Condition 37.1, in the event of a Performance Default the Council shall issue a notice (a "**Rectification Notice**") to the Concessionaire which shall:

37.2.1. be signed by the Authorised Officer;

37.2.2. state on its face that it is a Rectification Notice;

37.2.3. set out in general terms the matter or matters giving rise to such Rectification Notice; and

37.2.4. require that the Concessionaire (at its own cost and expense) remedy such Performance Default (and/or any damage directly or indirectly resulting from such failure) and/or take measures to prevent the recurrence of such Performance Default within a reasonable period (in either case, the "**Remedial Period**").

37.3. If the Concessionaire:

37.3.1. considers that a particular Remedial Period is unreasonable or impossible to comply with; and/or

37.3.2. disputes the Performance Default,

then the Concessionaire shall notify the Authorised Officer within the Remedial Period, and in any event within five (5) Working Days of receipt of the Rectification Notice, and the Parties shall attend a meeting to discuss the matter. If the matter still remains unresolved, it shall be referred to the Dispute Resolution Procedure.

37.4. Action Plan

37.4.1. Unless the Remedial Period is less than ten (10) days, the Concessionaire shall, within ten (10) Working Days of receipt of a Rectification Notice, prepare a plan (an "**Action Plan**") setting out the measures which the Concessionaire shall carry out or has carried out to ensure that the Performance Default is remedied within the Remedial Period and to ensure that it does not occur again.

37.4.2. The Concessionaire shall submit the Action Plan to the Authorised Officer for approval (which approval shall not be unreasonably withheld or delayed). The Authorised Officer shall be entitled to suggest reasonable amendments to the Action Plan which the Concessionaire shall incorporate.

37.4.3. The Concessionaire shall implement the approved Action Plan within the timescale contained within the approved Action Plan.

37.5. Escalation

37.5.1. If:-

- 37.5.1.1. the Concessionaire fails to remedy a Performance Default in accordance with the Rectification Notice and/or Action Plan;
- 37.5.1.2. the Concessionaire commits a Performance Default which is incapable of remedy;
- 37.5.1.3. the Concessionaire repeats the same or substantially similar Performance Default; and/or
- 37.5.1.4. more than two (2) Rectification Notices in respect of a Performance Defaults (in each case not necessarily relating to the same breach or failure) have been issued to the Concessionaire in any continuous four (4) week period;

then the Council may (without prejudice to any other right or remedy available to it) serve a default notice on the Concessionaire (the “**Default Notice**”).

37.6. Default Notices

37.6.1. The Default Notice shall:

- 37.6.1.1. be signed by the Authorised Officer;
- 37.6.1.2. state on its face that it is a Default Notice;
- 37.6.1.3. state on its face the Default Sum to be deducted in respect of the Performance Default;
- 37.6.1.4. set out in general terms the matter or matters giving rise to such Default Notice; and
- 37.6.1.5. set out the course of action (if any) which the Council requires the Concessionaire to take in to ensure that the Performance Default is remedied and/or does not occur again together with the date by which such action is to be taken.

37.6.2. The Concessionaire shall comply with the terms of the Default Notice.

37.7. In the event that one or more of the following occurs:

- 37.7.1. the Concessionaire fails to remedy a Performance Default in accordance with the Default Notice issued by the Council; or
- 37.7.2. the Performance Default is in relation to a fundamental breach of this Contract; or
- 37.7.3. the Concessionaire is issued with more than five (5) Default Notices (whether or not relating to the same or similar breaches) in any continuous three (3) month period and irrespective of whether any or all Performance Defaults specified in any Default Notices have been remedied or specified steps have been undertaken in accordance with such Default Notices;

the Council may give notice to the Concessionaire that the Council, in its absolute discretion, is exercising one of the following options:

- 37.7.4. without determining this Contract in whole or in part, provide or cause to be provided other than by the Concessionaire, such part of the Services as the Authorised Officer may nominate until such time as the Concessionaire shall have proved to the reasonable satisfaction of the Authorised Officer that such part of the Services will be carried out by the Concessionaire to the standard required by this Contract; or at the Authorised Officer's option, until such later date as the Authorised Officer may specify as being in his opinion a reasonable date upon which the Concessionaire will be able to provide such part of the Services; or
 - 37.7.5. without determining the whole of this Contract, determine part of this Contract in respect of such part of the Services as the Authorised Officer may nominate and thereafter the Authorised Officer may provide, or cause to be provided other than by the Concessionaire, such part of the Services; or
 - 37.7.6. terminate this Contract in accordance with the provisions of Condition 38.
- 37.8. The Council may charge to the Concessionaire any costs reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Services by the Council or by a third party in the circumstances set out in Condition 37.7.4 to the extent that such costs exceed the payment which would otherwise have been payable to the Concessionaire for such part of the Services and all or any of the costs thereby incurred may be deducted from any sums due or to become due to the Concessionaire under this Contract, or may be recoverable from the Concessionaire by the Council as a debt. The rights of the Council under this Condition shall be without prejudice to any of its other rights under this Contract or at common law.

38. TERMINATION FOR CONTINUING FORCE MAJEURE

- 38.1. Either Party may, by written notice to the other, terminate this Contract in the event that a Force Majeure Event occurs which prevents a Party from performing all or a substantial part of its obligations under this Contract for a continuous period of more than sixty (60) days.

39. TERMINATION

Termination by the Council

- 39.1. In the event that the Council wishes to withdraw from the provision of the Services, the Council shall be entitled to give notice to the Concessionaire to terminate this Contract by giving six (6) months' prior written notice to the Concessionaire.
- 39.2. Without prejudice to any other rights and remedies it may possess including its right of termination under Condition 37 above, if any one or more of the following matters occurs, the Council shall be entitled to give notice to terminate this Contract in whole or in part by issuing a notice to that effect. For the avoidance of doubt the occurrence of any one of the matters listed below shall be deemed a repudiatory breach of contract by the Concessionaire. The right of the

Council to terminate shall be a contractual right pursuant to this Condition 38 and/or a common law right accepting the Concessionaire's repudiatory breach as the circumstances dictate. The matters referred to in this Condition are:

- 39.2.1. the Concessionaire being in material breach, which is not remedied within a reasonable time or repeatedly failing to meet the Contract Standard as determined by the Council in its reasonable discretion resulting in the Council being deprived of substantially the whole benefit of substantially any aspect of the Contract;
- 39.2.1. if a Persistent KPI Failure has occurred;
- 39.2.2. if a Catastrophic Failure has occurred;
- 39.2.3. in relation to any contract with the Council, the Concessionaire or any of its Employees shall:
 - 39.2.3.1. have committed any offence under the Bribery Act 2010; or
 - 39.2.3.2. have given any reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972;
- 39.2.4. the Concessionaire having been served with written notice under Condition 37.7.6;
- 39.2.5. the Concessionaire having failed to perform a substantial part of the Services for a period of seven (7) consecutive days;
- 39.2.6. the Concessionaire or where applicable any director or partner thereof:
 - 39.2.6.1. suffering any distress or process of execution to be levied on its goods;
 - 39.2.6.2. committing any act of bankruptcy or having a bankruptcy order made against him/her;
 - 39.2.6.3. entering into (whether an individual or body corporate) any arrangement, agreement of composition with and for the benefit of its creditors (including a voluntary arrangement under the provisions of the Insolvency Act 1986);
 - 39.2.6.4. having a winding-up order made or (except for the purpose of amalgamations or reconstruction) a resolution passed for voluntary winding-up, or having an application made from the appointment of an administrator, administrative receiver or receiver, or an administrator, administrative receiver or receiver having been appointed, over the whole or any part of his business and/or assets;
 - 39.2.6.5. having a provisional liquidator, receiver or manager of the whole or any part of his business appointed; or

- 39.2.6.6. having possession taken of any of its property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge;
- 39.2.7. the Concessionaire misuses or infringes any of the Intellectual Property Rights of the Council or the Council's Equipment or uses the same other than in the provision of the Services;
- 39.2.8. if this Contract should not have been awarded to the Concessionaire in view of a serious infringement of the obligations under the Treaties and the Public Contracts Regulations 2015 that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU;
- 39.2.9. if there shall be any change in control (as defined by section 1124 of the Corporation Tax Act 2010) of the Concessionaire or (where the Concessionaire is a subsidiary company) in its ultimate holding company; and
- 39.2.10. any other breach by the Concessionaire of any of its obligations under this Contract which, in the reasonable opinion of the Council:
- 39.2.10.1. constitutes a fundamental breach of contract by the Concessionaire; or
 - 39.2.10.2. is a serious breach that has been repeated or persisted in by the Concessionaire after receipt by the Concessionaire of a written warning that the Council may invoke this Condition in respect of the said breach, and after the Concessionaire has had a reasonable opportunity to prevent such repetition or persistence; or
 - 39.2.10.3. is a serious breach which is not capable of remedy.
- 39.3. The Council's rights under this Condition are in addition and without prejudice to any right that either Party may have against the other for prior breach and to any right the Council may have against the Concessionaire for the breach, default, negligence or event leading to the Termination.
- Consequences of Termination**
- 39.4. Termination shall be without prejudice to the rights and remedies of the Concessionaire and the Council accrued before such termination and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding as at the date of such termination.
- 39.5. Upon the Expiry Date or Termination Date of this Contract the Concessionaire shall, in addition to such consequences as are set out in the other provisions of this Contract:
- 39.5.1. unless requested otherwise by the Authorised Officer, immediately cease to operate the Services;
 - 39.5.2. be liable immediately to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of this Contract by the Concessionaire;

- 39.5.3. fully and promptly indemnify and compensate the Council against all loss and damage suffered by the Council by reason of such termination;
 - 39.5.4. the Concessionaire shall forthwith hand over any and all Council property, including but not limited to equipment, supplies, records and work-in-progress, whether in the form of documents, plans, calculations, drawings, computer data or other material in any medium; and
- 39.6. It is hereby agreed that Conditions 19 (Acquired Rights Directive, TUPE and Pensions), 26 (Data Protection), 28 (Confidentiality), 32 (Payments to the Council/Interest on Late Monies/Charges), 34 (Liability and Indemnity), 35 (Insurance), 37 (Default in Performance), 38 (Termination), 40 (Arrangements for Re-Tendering and Handover on Termination) and 41 (Dispute Resolution) of this Contract shall continue in full force and effect and be enforceable by the Council.

40. ARRANGEMENTS FOR RE-TENDERING AND HANDOVER ON TERMINATION

- 40.1. If requested to do so by the Authorised Officer, the Concessionaire shall provide to the Council any and all relevant information to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise. For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Council to comply with its duties under the TUPE, and set out in detail in Condition 19. Such information provided pursuant to this Condition 40 shall be at no cost to the Council.
- 40.2. If the Concessionaire does not secure a further contract for the provision of the Services or similar successor services, following termination of this Contract for any reason:
 - 40.2.1. the transition to a successor(s) shall be arranged between the Authorised Officer and the Concessionaire and the Concessionaire shall not redeploy within its organisation any person involved in the provision of the Services without the consent of the Authorised Officer;
 - 40.2.2. the Concessionaire shall co-operate fully with the Authorised Officer during the transition (such co-operation to include provision of full access to all Council Data, documents, manuals, working instructions, reports, and any information whether held in electronic or written form, which the Authorised Officer considers necessary to achieve effective transition and subsequent provision of the Services or similar services);
 - 40.2.3. the Concessionaire at its own expense shall deliver all records relating to the Services to the Council or to the successor(s) or ensure their confidential destruction in accordance with the Authorised Officer's written instructions;
 - 40.2.4. the Council shall have the following options:
 - 40.2.4.1. to purchase from the Concessionaire at a fair market price to be agreed between the parties any Equipment and other tangible property which is

owned by the Concessionaire and is used exclusively, or for the greater part, in connection with the Services being provided under this Contract;

40.2.4.2. subject to the terms of any such third party agreement, to require the Concessionaire at no charge (save for the payment by the Council of third party charges with respect to such assignments) to assign to the Council any equipment leases, maintenance or support agreements or other arrangements including licences for the use of third party software between the Concessionaire and third parties which relate to equipment or software used exclusively in connection with the Services being provided under this Contract;

40.2.4.3. to the extent that the Services being supplied by the Concessionaire to the Council include any Concessionaire owned proprietary software then such software shall be and remain the property of the Concessionaire but the Council may require the Concessionaire to provide to the Council a perpetual, non-exclusive, non-transferable licence for the Council to utilise (or for its chosen alternative service supplier to utilise on its behalf) without charge the Concessionaire's software in connection with the Council's continuing performance of the Services contemplated hereunder, subject to the prior execution of a written licence agreement containing fair and reasonable terms and conditions including but not limited to, provisions for the protection of the Concessionaire's proprietary rights therein; or

40.2.4.4. the Concessionaire may request the Authorised Officer to reimburse any additional costs, other than incurred under Condition 40.2.3, necessarily and properly incurred by the Concessionaire in providing assistance and co-operation during the transition. Any such request shall be accompanied by such evidence of expenditure and the reasons for it as the Authorised Officer may require. No such requests shall be unreasonably refused.

41. DISPUTE RESOLUTION

Expert Determination

- 41.1. Any matter or dispute to be determined by the Expert under this Contract shall be referred for determination to a person suitably qualified to determine such matter or dispute and who shall be nominated jointly by the Council and the Concessionaire or, failing agreement as to such nomination within seven (7) days, to such person as may be appointed, on the application of either the Council or the Concessionaire, by the President for the time being of the Law Society.
- 41.2. The Council and the Concessionaire shall, on request, promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination

and both the Council and the Concessionaire shall use all reasonable endeavours to procure the prompt determination of such reference.

41.3. The Expert shall be deemed to act as an expert and not as an arbitrator and his determination shall be conclusive and binding upon the parties.

41.4. The costs of the Expert appointed hereunder shall be borne by the Concessionaire and/or the Council in such proportions as shall be directed by the Expert.

Mediation

41.5. In the event of any dispute or difference arising between the parties in connection with this Contract except anything falling for determination by the Expert, senior representative(s) of the Parties shall, within ten (10) days of a written request from either Party to the other meet in a good faith effort to resolve the dispute without recourse to legal proceedings.

41.6. If the dispute or difference is not resolved as a result of such meeting, either Party may (at such meeting or within fourteen (14) days from its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a mediator or neutral advisor ("**Mediator**").

41.7. If the Parties are unable to agree on a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within fourteen (14) days from the date of the proposal to appoint a Mediator or within fourteen (14) days of notice to either Party that he or she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution, 70 Fleet Street, London, EC4Y 1EU ("**CEDR**") to appoint a Mediator.

41.8. The Parties shall within fourteen (14) days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

41.9. Unless concluded with a written legally binding agreement all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

41.10. If the Parties accept the Mediator's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and, once it is signed by their duly authorised representatives, shall be binding on the Parties. Unless otherwise agreed between the parties, such agreement shall be implemented in full within thirty (30) days of signature failing which it shall be rendered null and void (and may not be referred to in any subsequent legal proceedings) unless legal proceedings have been initiated to enforce it within a further thirty (30) days.

41.11. Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing, who need only comply with their request if he/she considers it would be helpful. Any such opinion shall not be an attempt to anticipate what a court might order but rather the Mediator's suggestions as to the settlement terms which are considered

appropriate in all the circumstances. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings arising in connection with this Contract without the prior written consent of both Parties.

41.12. If the Parties fail to reach agreement in the structured negotiations within sixty (60) days of the Mediator being appointed then any dispute or difference between them may be referred to the English Courts unless within a further period of thirty (30) days the Parties agree to refer the matter to arbitration before an arbitrator whose method of appointment is agreed between them.

42. STEP IN RIGHTS

42.1. If the Council reasonably believes that it needs to take action in connection with this Contract:

42.1.1. because a serious risk exists to the health or safety of persons or property or to the environment;

42.1.2. to discharge a statutory duty; and/or

42.1.3. to remedy a breach of this Contract by the Concessionaire,

then the Council shall be entitled to take action in accordance with the provisions of this Condition 42.

42.2. If Condition 42.1 applies and the Council wishes to take action, the Council shall notify (by way of an "**Action Notice**") the Concessionaire of the following:

42.2.1. the action it wishes to take;

42.2.2. the reason for such action;

42.2.3. the date it wishes to commence such action;

42.2.4. the time period which it believes will be necessary for such action; and

42.2.5. the effect on the Concessionaire and its obligations to provide the Services during the period such action is being taken,

provided always that where the Concessionaire has remedied the problem to the reasonable satisfaction of the Council, prior to the date referred to in Condition 42.2.3, the Action Notice shall be deemed to be withdrawn and therefore Condition 42.3 shall not apply.

42.3. Following service of any Action Notice, the Council may take such action as notified under Condition 42.2 and any consequential additional action as it reasonably believes to be necessary (together the "**Required Action**"):

42.3.1. at the Concessionaire's cost if such action results from a breach of this Contract; or

42.3.2. at the Council's cost if such action does not result from a breach of this Contract and the Concessionaire shall give all reasonable assistance to the Council while it is taking such Required Action.

42.4. The taking of the Required Action shall be subject to the following conditions:

42.4.1. the Council shall employ suitably qualified contractors or personnel;

- 42.4.2. the Council shall take reasonable steps to properly manage any contractors or works being carried out so as to procure that any rights and/or remedies available to it or the Concessionaire against the contractors are preserved;
- 42.4.3. the Council shall take all reasonable steps to mitigate the effects of the circumstances to the extent that such effects are giving rise to the Required Action including taking all reasonable steps to minimise the period of the Required Action; and
- 42.4.4. the Council shall have due regard to all reasonable recommendations put forward by the Concessionaire.
- 42.5. The Council shall be entitled to take the Required Action until the circumstances giving rise thereto have ceased to subsist or until such times as the Concessionaire is able to demonstrate to the Council's reasonable satisfaction that it has implemented sufficient measures to allow resumption of performance of the Services without such circumstances persisting.
- 42.6. To the extent that the Required Action affects the ability of the Concessionaire to provide any part of the Services, the Concessionaire shall, without prejudice to the Council's rights under this Contract:
- 42.6.1. be relieved of its obligations to provide such part of the Services; and
- 42.6.2. if the Council takes the Required Action as a result of a breach of this Contract by the Concessionaire and the Concessionaire is unable to provide the Services in whole or in part the Concession Fee due from the Concessionaire to the Council shall equal the amount the Council would receive if the Concessionaire was satisfying all of its obligations and providing the Services affected by the Required Action in full over that period, plus an amount equal to all of the Council's costs of operation in taking the Required Action.

43. AGENCY

- 43.1. Neither the Concessionaire nor its Employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by the Contract.
- 43.2. Neither the Concessionaire nor its Employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council or any other way to bind the Council to the performance, variation, release or discharge of any obligation.
- 43.3. Neither the Concessionaire nor its Employees shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

44. PRESS AND PUBLICITY

- 44.1. The Council's aim is for the highest standard of presentation of the image of its activities to the public, and to ensure a fair and favourable reputation for its services via effective

communication to the media and the public. The Concessionaire shall at all times comply with the Council's code of practice for publicity as notified to the Concessionaire from time to time. Without limitation the main provisions of the aforementioned code are as set out in this Condition 44.

- 44.2. All information and publicity concerning the Council's activities, and those of the Concessionaire in connection with this Contract, shall be subject to prior approval by the Authorised Officer.
- 44.3. All enquiries received by the Concessionaire from press, radio, television or other media which may concern the Council shall immediately be referred to the Authorised Officer for attention by the Council's press office.
- 44.4. The Concessionaire shall not advertise that it has been awarded the Contract other than with the prior written consent of the Authorised Officer.
- 44.5. The Concessionaire shall notify the Authorised Officer well in advance of any activity under this Contract that is likely to achieve publicity, to enable the Council's press office to take a positive approach to such activities and deal with them appropriately.
- 44.6. The Concessionaire shall not use or adapt the Council's corporate logo or image without prior written approval of the Authorised Officer.
- 44.7. The Concessionaire shall not permit the placing or fixing of any advertising material whatsoever on or in the Council's premises without the prior approval of the Council.
- 44.8. The Concessionaire shall take all reasonable steps to ensure the observance of the provisions of this Condition 44 by its Employees and sub-concessionaires.

45. ASSISTANCE WITH LEGAL AND/OR OMBUDSMAN PROCEEDINGS

- 45.1. If requested to do so by the Authorised Officer, the Concessionaire shall provide to the Authorised Officer all relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council arising out of the provision of the Services or the Concessionaire's presence on any Council premises and the Concessionaire shall give evidence or assistance as required in any such inquiries, arbitrations, proceedings, hearings or tribunals.
- 45.2. Where the Concessionaire or any of its Employees become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision of the Services, then the Concessionaire shall notify the Authorised Officer thereof immediately in writing. Such notification shall include all relevant information to enable the Authorised Officer to fully investigate the matter.
- 45.3. The Concessionaire shall fully co-operate with and provide assistance and all relevant information to the Council and the Commission for Local Administration in England (the "Ombudsman") in any inquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matter arising in connection with the provision of the Services under the Contract.

- 45.4. If, as a result of such inquiry or investigation, the Ombudsman makes a finding against the Council of maladministration or injustice or other finding and if the finding is found to be attributable wholly or in part to the actions or omissions of the Concessionaire then (without prejudice to any other rights or remedies available to the Council under this Contract or any other contract with the Concessionaire) the Council shall be entitled to recover from the Concessionaire (whether by deduction from any monies due to the Concessionaire or otherwise) such proportion of any award made against the Council to a complainant and related costs as are attributable to those actions or omissions of the Concessionaire.
- 45.5. In the event of a dispute as to the proportion of the award and costs payable by the Council and the Concessionaire pursuant to any finding of the Ombudsman as aforesaid then the Parties shall seek to resolve such dispute pursuant to the provisions of Condition 41.
- 45.6. Any information provided or assistance rendered by the Concessionaire pursuant to the obligations in this Condition 45, in whatever form, shall be provided at no cost to the Council.

46. RECOVERY OF SUMS DUE TO THE COUNCIL

46.1. Without prejudice to any other Condition herein:

46.1.1. whenever under this Contract any sum of money shall be recoverable from or payable by the Concessionaire to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Concessionaire under this or any other contract with the Council; and

46.1.2. wherever the Concessionaire is obliged to carry out any work, act or thing or to pay money for obtaining any thing, document or advantage (for example, but not exclusively, insurance or a bond) then in the event of the Concessionaire not carrying out any such work, act or thing or obtaining such thing, document or advantage the Council shall be entitled to carry out such work, act thing and/or obtain such thing, document or advantage by itself or others and shall be entitled to obtain reasonable reimbursement of the actual expenses thereof by deduction from the next or subsequent payments due to the Concessionaire or shall be entitled to recover such reasonable expense by action against the Concessionaire as a debt and in reasonably carrying out any such work act or thing or obtaining such thing document or advantage the Council shall be under no obligation to employ the least expensive method of carrying out such work, act thing or obtaining such thing, document or advantage,

the Council may charge interest on any such amounts payable from twenty eight (28) days after a demand has been made therefor by the Council at four per cent (4%) over the rate current for NatWest Bank plc base rate and such interest shall run from day to day and shall accrue before and after any judgment and shall be compounded monthly on the amount overdue until payment of the original expense or sum.

46.2. “**Expense(s)**”, “**cost(s)**” or any similar word or expression where recoverable by the Council shall include the Council’s reasonable establishment charges (including the making up of the account and the recovery of the expense(s), cost(s) or the like).

47. INFORMATION TECHNOLOGY

- 47.1. For the purposes of providing the Services the Concessionaire may make use of computer systems and equipment of its own choice at its own expense and operate these from locations of its own choice.
- 47.2. The Authorised Officer shall be notified and consulted regarding any and all significant systems and equipment changes which materially affect the functional performance of any systems and the Concessionaire shall have due regard to any comments that the Authorised Officer may have in respect of such changes. In the event that the Authorised Officer shall have reasonable grounds to disapprove of any suggested change to the systems and equipment, the Concessionaire shall be instructed not to implement such change.
- 47.3. In relation to any computer systems and equipment used for the purposes of the Services, the Concessionaire shall ensure that:
- 47.3.1. all costs and obligations (including all licence fees, maintenance charges, the development of conversion programs, the production of test files, testing and parallel running) are met;
 - 47.3.2. the systems and equipment are capable of meeting all the relevant requirements of this Contract;
 - 47.3.3. effective communication links are established and operated at the Concessionaire's expense including all data transfer costs; and
 - 47.3.4. full training is provided at the Concessionaire's expense to such persons as the Authorised Officer may reasonably require in the use of the systems.
- 47.4. The Concessionaire shall ensure that adequate and secure back-up routines, anti-virus software, re-start procedures, checks for accuracy and security etc. are provided, and that up-to-date back-up copies of all Council Data relating to this Contract are available on a daily basis. The Authorised Officer reserves the right to inspect these at any time.
- 47.5. The Concessionaire shall ensure the protection of all Council Data and archive material from unauthorised access, tampering and system failures. If the Council Data is corrupted, lost or sufficiently degraded as a result of the Concessionaire's default so as to be unusable, the Council may:
- 47.5.1. require the Concessionaire (at the Concessionaire's expense) to restore or procure the restoration of the Council Data and the Concessionaire shall do so as soon as practicable but not later than two (2) Working Days; and/or
 - 47.5.2. itself restore or procure the restoration of the Council Data, and the Concessionaire shall pay to the Council any reasonable expenses incurred in doing so.
- 47.6. Upon receipt or creation by the Concessionaire of any Council Data and during the collection, processing, storage and transmission by the Concessionaire of any Council Data, the

Concessionaire shall take all precautions necessary to preserve the integrity of the Council Data and to prevent any loss or corruption of the Council Data.

47.7. All data shall at all times remain the property of the Council, and the Concessionaire shall carry out all work in a secure environment.

48. ENVIRONMENTAL REQUIREMENTS

48.1. The Council is committed to minimising its impact on the environment and continually improving its environmental performance. As part of this commitment the Council has adopted Environmental Ambition Statement, Environmental Action Plan and Environmental Purchasing Policy, which can be downloaded from www.wandsworth.gov.uk/sustainability. The Council commends its Principles of Action to the Concessionaire in connection with its provision of the Services. These Principles of Action include without limitation the following:

48.1.1. pursuing value for money by considering whole life costs;

48.1.2. resource efficiency by minimising use of natural resources; avoiding waste; re-use, recycling and composting;

48.1.3. reducing carbon emissions and adopting low carbon technologies to mitigate the effects of climate change;

48.1.4. limiting habitat destruction, for example by giving preference to accredited products from sustainable sources; and

48.1.5. minimising all forms of pollution and associated environmental risks.

48.2. The Concessionaire shall keep the Authorised Officer fully informed of all of its activities that enable the Council to improve its implementation of its Environmental Policy.

49. GENERAL CONDITIONS

49.1. Rights of Third Parties

The parties do not intend any provision of this Contract to be enforceable by a third party by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.

49.2. Sufficiency of Information

The Council does not warrant the accuracy of any representation or statement of fact or law given to the Concessionaire by the Council, its servants or agents at any time prior to the execution of this Contract. The Council shall not be liable to the Concessionaire for any loss or damage which the Concessionaire may sustain as a result of relying on any such other representation, statements, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as any such other representation, statement information or advice was made or given fraudulently by the Council, its servants or agents acting in the course of their employment.

49.3. Approval

Neither the examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Council, nor the failure of the same, shall unless otherwise expressly stated in this Contract, relieve the Concessionaire of any of its obligations under the Contract or any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the examination, acknowledgement or knowledge.

49.4. Succession

References to a public organisation (including the Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.

49.5. Governing Law and Jurisdiction

This Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with English Law. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute, claim or matter that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

49.6. Status of Warranties

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Concessionaire in this Contract are cumulative and none shall be given a limited construction by reference to another.

49.7. Waiver

Failure by the Council at any time to enforce the provisions of this Contract or to require performance by the Concessionaire of any of the provisions of this Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

49.8. Severance

If any provision of this Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall not in any way impair or affect any other provision all of which shall remain in full force and effect.

49.9. No Double Recovery

Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

49.10. Capacity

Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counter party and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Concessionaire.

49.11. Restriction on Trade

49.11.1. Upon the expiry or sooner termination of this Contract for whatever reason the Concessionaire, and any associated company or person, shall not:

49.11.1.1. for a period of one (1) year solicit the services of any employee of the Council or any employee to be transferred upon termination of this Contract;

49.11.1.2. use or disclose any information of a confidential or commercial nature acquired by it during the provision of the Services under this Contract; or

49.11.1.3. adopt any livery, style or name likely to cause any person to confuse the Services of the Concessionaire with the services of the Council or any of its concessionaires involved in running services similar to the Services.

49.12. Whole Contract

49.12.1. This Contract constitutes the entire agreement and understanding between the parties in relation to this Contract and supersedes all prior representations, arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating to the Services.

49.12.2. Each Party irrevocably and unconditionally waives any rights it may have to claim damages and/or rescind this Contract for any misrepresentation or for breach of warranty not contained in this Contract unless such misrepresentation or warranty was made fraudulently.

49.12.3. The provisions of Conditions 49.12.1 and 49.12.2 above shall not apply to any representations, statements or warranties given by the Concessionaire to the Council regarding its financial standing, experience or probity pursuant to any shortlisting process not to any representations, statements, warranties given by the Concessionaire to the Council pursuant to the terms of this Contract.

50. NON-EXCLUSIVITY

The rights granted to the Concessionaire to provide the Services under the terms of this Contract are non-exclusive and the Council may appoint alternative or additional concessionaires to provide the Services.

IN WITNESS whereof the Parties have executed this Contract as a **DEED** the day and year first before written.

THE COMMON SEAL of THE MAYOR AND)
BURGESSES OF THE LONDON BOROUGH)
OF WANDSWORTH was affixed to this DEED)
BY ORDER)

Director of Administration:

Seal Register No:

SIGNED as a DEED and DELIVERED)
by)
a director for and on behalf of)
[])
in the presence of:)

Full name of Witness (print)
Full address of Witness (print)
.....
.....
Occupation of Witness (print)
Signature of Witness



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Schedule 3 TUPE AND PENSIONS

[Note to tenderers: this Schedule only applies in its entirety if the successful Tenderer is not the incumbent provider of services equivalent to the Services.

In the event that the successful Tenderer is the incumbent provider then (on the assumption that there is no transfer of undertaking at the Commencement Date) the following paragraphs do not apply or only apply in part:-

- Paragraph 2.1.1 does not apply
- Paragraph 3.1 does not apply
- Paragraph 4 does not apply
- Paragraph 5.1 does not apply
- Paragraphs 6.1 and 6.2 do not apply

The remaining paragraphs would continue to apply in full if the incumbent provider is the successful Tenderer]

1. Definitions

1.1. In this Schedule 3 (TUPE and Pensions) the following words and expressions shall have the meanings set out below:

Phrase/Word	Meaning
Administering Authority	means the Council acting in its capacity as the administering authority of the London Borough of Wandsworth Pension Fund for the purposes of the LGPS Regulations;
Admission Agreement	means an admission agreement entered into in accordance with the LGPS Regulations by the Administering Authority, the Council and the Concessionaire or a Sub-Concessionaire (as appropriate);
Admission Body	means an admission body for the purposes of the LGPS Regulations;
Agreed Contribution Rate	means 18% of Pensionable Pay ⁹ being the employer contribution rate calculated by the Administering Authority on the basis of the actuarial assumptions used in the most recent valuation of the Fund;
Assigned Employee	as defined in paragraph 8.1.1;

⁹ Note to Tenderers: The Agreed Contribution Rate will be discussed with Tenderers as part of the negotiations in the Negotiation Period.

Phrase/Word	Meaning
Cessation Date	means any date on which the Concessionaire or the relevant Sub-Concessionaire ceases to be an Admission Body other than as a result of the termination of this Contract or because it ceases to employ any Eligible Employees;
Compensation Regulations	means the Local Government (Early Termination of Employment) (Discretionary Compensation) England and Wales Regulations 2006 (SI 2006/2914);
Concessionaire Decision	<p>means a decision by the Concessionaire or a Sub-Concessionaire as an Admission Body to:</p> <ul style="list-style-type: none"> (a) increase the total membership of any Eligible Employee in accordance with the LGPS Regulations; (b) consent to the retirement of an Eligible Employee as a result of redundancy or in the interests of efficiency; (c) consent to the retirement of any Eligible Employee before the normal retirement age for that employee; (d) consent to the payment of a pension to an eligible Employee as a result of a reduction in hours worked by that employee; (e) consent to the retirement of an Eligible Employee as a result of ill health; (f) increase the pay of any Eligible employee above the Pension Index (subject always to paragraph 29.4 below); or (g) engage any Eligible Employee on duties other than the provision of the Services under this Contract;
Concessionaire Scheme	as defined in paragraph 19.1;
Deficit Contribution	means any exit payment due from the Concessionaire or a Sub-Concessionaire to the Fund pursuant to Regulation 64 of the LGPS Regulations;
Direct Losses	means all damages, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at

Phrase/Word	Meaning
	common law but to avoid doubt, excluding Indirect Losses;
Directive	means the EC Acquired Rights Directive 2001/23/EC as amended;
Eligible Employees	<p>means:</p> <p>(a) Relevant Employees who are active members of or have the right to acquire benefits under the LGPS on a Relevant Transfer Date; and</p> <p>(b) any Transferring Original Employees who are active members of or have the right to acquire benefits under either the LGPS or a broadly comparable pension scheme provided by their existing employer on a Relevant Transfer Date</p> <p>for so long as they are employed in connection with the provision of the Services;</p>
Employee Liability Information	means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11 of TUPE;
Exit Credit	as defined in Regulation 64 of the LGPS Regulations;
Final Employee List	as defined in paragraph 4.2.2;
First Employee List	as defined in paragraph 4.1;
Fund	means the London Borough of Wandsworth Pension Fund within the LGPS;
Fund Actuary	means the Actuary appointed by the Fund from time to time;
Future Concessionaire	as defined in paragraph 6.3;
Ill Health Retirement	as defined in Regulation 35 of the LGPS Regulations
Incumbent Concessionaire	the Council's Concessionaire providing the equivalent of the Services for the Council prior to the Commencement Date;
Indirect Losses	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;

Phrase/Word	Meaning
LGPS	means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972;
LGPS Regulations	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356), as amended;
New Employee	as defined in paragraph 31.1.1 below;
New Employer	as defined in paragraph 25.1.2 below;
Notional Fund	as defined in paragraph 27.1 below;
Pension Index	means RPI plus 1.5%;
Pensionable Pay	as defined in in Regulation 20 of the LGPS Regulations;
Reimbursed Pension Contribution	as defined in paragraph 29.1 below;
Relevant Employees	means the employees who are the subject of a Relevant Transfer;
Relevant Transfer	means a relevant transfer for the purposes of TUPE;
Relevant Transfer Date	means the date of a Relevant Transfer;
Replacement Concessionaire	means any concessionaire which following termination or expiry of this Contract provides services equivalent to the Services or part of the Services;
Retendering Information	as defined in paragraph 8.1.1;
Return Date	means the date of expiry or termination of this Contract for whatever reason;
Return Date	as defined in paragraph 9.1 below;
Returning Employees	means those employees wholly or mainly engaged in the provision of the Services immediately before the expiry or termination of this Contract whose employment transfers to the Council or a Replacement Concessionaire pursuant to TUPE;
Service Transfer	means the transfer of the Services in whole or in part to the Council or a Replacement Concessionaire;
Sub-Concessionaire	means a person to whom the Concessionaire sub-contracts any of its obligations under this Contract;

Phrase/Word	Meaning
Transferring Employees	means those employees whose contract of employment will be transferred to the Council or a Replacement Concessionaire pursuant to TUPE on expiry or termination of this Contract (in whole or in part); and
Transferring Original Employees	<p>means an employee of the Council:</p> <p>(a) who became, by the application of TUPE in relation to what was done for the purposes of carrying out a contract between the Council and another body, an employee of someone other than the Council;</p> <p>(b) whose contract of employment on each occasion when an intervening contract was carried out became, by virtue of the application of TUPE in relation to what was done for the purposes of carrying out the intervening contract, a contract of employment with someone other than his existing employer; and</p> <p>(c) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Contract, a contract of employment with someone other than the Council.</p> <p>For the purposes of this definition, "intervening contract" has the meaning ascribed to that phrase in paragraph 10 of the Best Value Authorities Staff Transfers (Pensions) Direction 2007; and</p>
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

A. TUPE ISSUES ON COMMENCEMENT

2. Relevant Transfers

2.1. The Council and the Concessionaire agree that the following events:-

2.1.1. the Commencement Date; and

- 2.1.2. where the identity of a provider (including the Council) of any services which constitute or which will constitute the Services in whole or in part is changed whether in anticipation of changes pursuant to this Contract or not

shall constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the Concessionaire or a Sub-Concessionaire except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity or survivors' benefits.

- 2.2. The Concessionaire shall comply, and shall procure that each Sub-Concessionaire shall comply, with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Contract and the Concessionaire shall indemnify the Council against any Direct Losses sustained by the Council as a result of any breach of this paragraph 2.2 by the Concessionaire Party or any Sub-Concessionaire.

3. Emoluments and Outgoings

- 3.1. Subject to paragraph 6.2 below, the Council shall use reasonable endeavours to procure that the Incumbent Concessionaire is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Commencement Date.
- 3.2. The Concessionaire shall be responsible or shall procure that any relevant Sub-Concessionaire is responsible for all remuneration benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Concessionaire or any Sub-Concessionaire in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Commencement Date.

4. Employment Information

- 4.1. Subject to paragraph 4.3 below, the Council has supplied to the Concessionaire the information, as at the date of this Contract, which is contained in Appendix 1 to this Schedule 3 (TUPE and Pensions) (the "**First Employee List**") regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those employees of the Incumbent Concessionaire who it is expected, if they remain in the employment of the Incumbent Concessionaire until immediately before the Commencement Date, would be Relevant Employees but the Council give no warranty as to the accuracy or completeness of this information.
- 4.2. Subject to paragraph 4.3 below, the Council shall use reasonable endeavours to supply the Concessionaire:
 - 4.2.1. updates of the First Employee List at monthly intervals from the date of this Contract, ending with a fully updated list ten (10) working days before the Commencement Date; and
 - 4.2.2. within five (5) Working days after the Commencement Date information, by reference to the Commencement Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List. This list is the "**Final Employee List**".

- 4.3. The Council give and shall give no warranty as to the accuracy or completeness of any information contained in any update of the First Employee List or in the Final Employee List.
- 4.4. Without prejudice to paragraphs 4.1 and 4.2 above, the Council shall use reasonable endeavours to procure that the Incumbent Concessionaire shall:-
 - 4.4.1. provide the Employee Liability Information to the Concessionaire at such time or times as are required by TUPE; and
 - 4.4.2. update the Employee Liability Information to take account of any changes as required by TUPE

PROVIDED THAT the Council gives and shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Incumbent Concessionaire.

- 4.5. The Service Provider and the Council acknowledge that the Guaranteed Payment has been calculated using the information set out in the First Employee List and the Council has agreed that the Guaranteed Payment may be adjusted (subject to paragraphs 4.8 and 4.10 below) to take account of differences between the information in the First Employee List and the information in the Final Employee List or to take account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List.
- 4.6. If following the submission of the Final Employee List the Parties note that there are differences between the First Employee List and the Final Employee list and that consequently the Guaranteed Payment require to be adjusted on account of such differences there shall (subject to paragraphs 4.7, 4.8 and 4.10 below) be a corresponding adjustment to the Guaranteed Payment to compensate for any such difference.
- 4.7. If the circumstances described in paragraph 4.6 above arise:-
 - 4.7.1. in circumstances where there are more Relevant Employees than shown on the Final Employee List then the Parties shall discuss the implications for the provision of Services; and
 - 4.7.2. the Concessionaire shall take all reasonable steps to mitigate any additional costs and any adjustment to the Guaranteed Payment shall be calculated as if they had done so.
- 4.8. In calculating any adjustment to be made to the Guaranteed Payment pursuant to paragraph 4.6 above:-
 - 4.8.1. no account shall be taken of a decrease in the Final Employee List to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Commencement Date, fewer suitably qualified employees available than are required in order to carry out the Services; and
 - 4.8.2. to avoid double counting, no account shall be taken of any increase shown in the Final Employee List to the extent that the Concessionaire has been or will be compensated as a result of any indexation of the Guaranteed Payment under this Contract.
- 4.9. Within two (2) months of submission of the Final Employee List either Party may propose an adjustment to the Guaranteed Payment pursuant to paragraph 4.6 above by giving not less than ten (10) working days' notice to the other. Each Party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other Party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to paragraph 4.6. The Parties shall use their reasonable endeavours to agree any adjustment within three (3) months of the date of the notification given pursuant to this paragraph 2.4.9.

- 4.10. In relation to all matters described in paragraphs 4.8 above the Concessionaire and the Council shall, and the Concessionaire shall procure that the relevant Sub-Concessionaire shall, cooperate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

5. Union Recognition

- 5.1. The Council shall use reasonable endeavours to procure that the Incumbent Concessionaire shall supply to the Concessionaire no later than ten (10) working days prior to the Commencement Date true copies of the Incumbent Concessionaire's union recognition agreements(s) applicable to the Relevant Employees and the Concessionaire shall in accordance with TUPE recognise the trade unions representing Relevant Employees after the transfer to the same extent as they were recognised by the Incumbent Concessionaire before the Commencement Date.
- 5.2. The Concessionaire shall procure that, on each occasion on which the identity of a Sub-Concessionaire changes pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Concessionaire shall in accordance with TUPE
- 5.3. recognise the trade unions representing the employees whose contracts of employment transfer to a new Sub-Concessionaire to the same extent as they were recognised before the change of identity of the Sub-Concessionaire in respect of the provision of the Services.

6. Indemnities

- 6.1. Subject to paragraph 6.2 below, the Council shall indemnify and keep indemnified in full the Concessionaire (for itself and for the benefit of each relevant Sub-Concessionaire) against all Direct Losses incurred by the Concessionaire or any relevant Sub-Concessionaire in connection with or as a result of:-
- 6.1.1. a breach by the Council of its obligations under paragraph 3.1 above; or
- 6.1.2. any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee, provided that this arises from any act, fault or omission of the Incumbent Concessionaire in relation to that Relevant Employee prior to the Commencement Date (save where such act, fault or omission arises as a result of the Concessionaire's or any relevant Sub-Concessionaire's failure to comply with its obligations under Regulation 13 of TUPE).
- 6.2. The indemnities contained in paragraph 6 above shall only apply where the Concessionaire is not the Incumbent Concessionaire, and to the extent that the Council recover any sum in respect of the subject matter of that indemnity from the Incumbent Concessionaire under any indemnity or other legal entitlement they have against the Incumbent Concessionaire. The Council will use their reasonable endeavours to recover any such sums under any such entitlement as is mentioned in this paragraph 6.2.
- 6.3. The Concessionaire shall indemnify and keep indemnified in full the Council, and at the Council's request each and every services provider who or which shall provide any Services equivalent to any of the Services after expiry or earlier termination of this Contract ("**Future Concessionaire**"), from and against:-
- 6.3.1. all Direct Losses incurred by the Council or any Future Concessionaire in connection with or as a result of any claim or demand against the Council or any Future Concessionaire by any person who is or has been employed or engaged by the Concessionaire or any Sub-Concessionaire in connection with the provision of the Services or any part of them

where such claim arises as a result of any act, fault or omission of the Concessionaire and/or any Sub-Concessionaire on or after the Commencement Date;

6.3.2. all Direct Losses incurred by the Council or any Future Concessionaire in connection with or as a result of a breach by the Concessionaire of its obligations under paragraph 3.2 above; and

6.3.3. all Direct Losses incurred by the Council or any Future Concessionaire in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Concessionaire and/or the relevant Sub-Concessionaire in respect of all or any of the Relevant Employees) arising from or connected with:

6.3.3.1. any failure by the Concessionaire and/or any Sub-Concessionaire to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 or 14 of TUPE; or

6.3.3.2. any award of compensation under Regulation 15 of TUPE, under the Directive or otherwise

and whether any such claim arises or has its origin before, on or after the date of the Commencement Date.

6.4. The Concessionaire shall indemnify and keep indemnified in full the Council against all Direct Losses incurred by the Council in connection with or as a result of:-

6.4.1. the change of identity of employer occurring by virtue of TUPE to the Concessionaire or the relevant Sub-Concessionaire being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Commencement Date as a result of the change in employer and whether such claim arises before, on or after the Commencement Date;

6.4.2. any proposed or actual change by the Concessionaire or any Sub-Concessionaire to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Concessionaire or the relevant Sub-Concessionaire which are to any of the Relevant Employee's material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Commencement Date as a result of any such proposed changes or measures, and whether such claim arises before, on or after the Commencement Date; and

6.4.3. any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Concessionaire or Sub-Concessionaire to the Relevant Employees or their representatives whether before, on or after the Commencement Date, and whether liability for any such claim arises before, on or after the Commencement Date.

6.5. For the avoidance of doubt, the indemnities in paragraphs 6.3 and 6.4 above shall not apply to the extent that the claim arises from a wrongful act or omission of the Council.

7. Provision of Details and Indemnity

7.1. The Concessionaire shall immediately upon request by the Council provide to the Council details of any measures which the Concessionaire or any Sub-Concessionaire envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the

Council for itself and the benefit of the Incumbent Concessionaire against all Direct Losses resulting from any failure by the Concessionaire to comply with this obligation.

B. TUPE ISSUES ON RETENDERING AND EXIT

8. Retendering

- 8.1. The Concessionaire shall (and shall procure that any Sub-Concessionaire shall) within the period of twelve (12) months (or earlier if the Council so requires for the purposes of retendering) immediately preceding the expiry of this Contract, or following the service of a notice under Condition 38 (Termination):-
 - 8.1.1. on receiving a request from the Council provide in respect of each person engaged or employed by the Concessionaire or any Sub-Concessionaire in the provision of the Services ("**Assigned Employee**") full and accurate details regarding their identity, number, age, sex, length of service, job title, grade and terms and conditions of employment or and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Concessionaire or of any Sub-Concessionaire as the case may be until immediately before the Termination Date, would be Returning Employees (the "**Retendering Information**");
 - 8.1.2. provide the Retendering Information promptly and at no cost to the Council;
 - 8.1.3. notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 8.1.4. be precluded from:
 - 8.1.4.1. making any material increase or decrease in the numbers of Assigned Employees;
 - 8.1.4.2. be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees (other than in the ordinary course of business and with the Council's prior written consent);
 - 8.1.4.3. be precluded from increasing the proportion of working time spent on the Services (or the relevant part) by any of its employees (other than in the ordinary course of business and with the Council's prior written consent);
 - 8.1.4.4. be precluded from introducing any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any of its employees; and
 - 8.1.4.5. be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services (other than in the ordinary course of business and with the Council's prior written consent).
- 8.2. Without prejudice to paragraphs 8.1 above and 8.3 below, the Concessionaire shall provide, and shall procure that each Sub-Concessionaire shall provide, the Employee Liability Information to the Council and/or any Future Concessionaire at such time or times as are required by TUPE, and shall warrant to the Council and all Future Concessionaires at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.

- 8.3. The Concessionaire shall indemnify, and shall keep indemnified, in full the Council, and at the Council's request each Future Concessionaire, against all Direct Losses arising from any claim by any party as a result of the Concessionaire or Sub-Concessionaire failing to provide or promptly to provide the Council and/or any Future Concessionaire where requested by the Council with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information.

9. Termination of Contract

- 9.1. On the expiry or earlier termination of this Contract, the Council and the Concessionaire agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any Services equivalent to the Services or part of the Services but the position shall be determined in accordance with Law at the date of expiry or termination as the case may be and this **paragraph 9** is without prejudice to such determination.

- 9.2. Upon expiry or termination of this Contract for whatever reason (such date being termed the "Return Date"), the provisions of this paragraph 9 shall apply and:-

- 9.2.1. the Concessionaire shall ensure that:

9.2.1.1. all wages, salaries and other benefits of the Returning Employees and of all other employees or former employees of the Concessionaire or the Sub-Concessionaire(s) who had been engaged in the provision of the Services; and

9.2.1.2. all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Concessionaire or Sub-Concessionaires up to the Return Date are paid or satisfied;

- 9.2.2. without prejudice to paragraph 9.2.1 above, the Concessionaire shall:-

9.2.2.1. remain (and procure that any Sub-Concessionaire shall remain) (as relevant) responsible for all the Concessionaire's or Sub-Concessionaire's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Council and each Future Concessionaire against all Direct Losses incurred by the Council and/or the relevant Future Concessionaire resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Concessionaire's or Sub-Concessionaire's employees who do not constitute the Returning Employees;

9.2.2.2. in respect of those employees who constitute Returning Employees, the Concessionaire shall indemnify the Council and each Future Concessionaire against all Direct Losses incurred by the Council and/or the relevant Future Concessionaire resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Concessionaire of any Sub-Concessionaire to comply with its or their obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply, save to the extent

that any such failure to comply arises as a result of an act or omission of the Council or any Future Concessionaire.

10. Future Concessionaires

- 10.1. The Council shall be entitled to assign the benefit of all indemnities given to it in this Schedule 3 (TUPE and Pensions) to any Future Concessionaire.
- 10.2. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Schedule 3 (TUPE and Pensions) to the extent necessary to ensure that any Future Concessionaire shall have the right to enforce the obligations owed to, and indemnities given to, the Future Concessionaire by the Concessionaire or Sub-Concessionaire, pursuant to section 1(1) Contracts (Rights of Third Parties) Act 1999.

11. Sub-Concessionaires

- 11.1. In the event that the Concessionaire enters into any sub-contract in connection with this Contract, it shall impose obligations on each Sub-Concessionaire in the same terms as those imposed on it pursuant to this Schedule 3 (TUPE and Pensions), and shall procure that the Sub-Concessionaire complies with such terms.
- 11.2. The Concessionaire shall indemnify and keep the Council indemnified in full against all Direct Losses incurred or by the Council or any Future Concessionaire as a result of or in connection with any failure on the part of the Concessionaire to comply with paragraph 11.1, and/or any Sub-Concessionaire's failure to comply with such terms.

12. TUPE Consultation

- 12.1. The parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any Relevant Transfer will be fulfilled.
- 12.2. The Concessionaire agrees that it will consent to, and co-operate with, pre-transfer consultation by the Council or any Future Concessionaire.

C. PENSIONS ISSUES

13. Concessionaire or Sub-Concessionaire to Become an Admission Body

- 13.1. Where the Concessionaire or a Sub-Concessionaire employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the LGPS, the Concessionaire shall procure that it and/or each relevant Sub-Concessionaire shall become an Admission Body. The Concessionaire shall before the Relevant Transfer Date execute and procure that each relevant Sub-Concessionaire executes an Admission Agreement which will have effect from and including the Relevant Transfer Date.

14. Admission Agreement

- 14.1. The Council shall in its capacity as the scheme employer under this Contract and as Administering Authority before the Relevant Transfer Date execute each of the Admission

Agreements referred to in paragraph 13 (Concessionaire or Sub-Concessionaire to Become an Admission Body).

15. Indemnity for a Breach of the Admission Agreement

15.1. Without prejudice to the generality of this Section C (PENSIONS), the Concessionaire hereby indemnifies the Council and/or any Future Concessionaire and, in each case, their Sub-Concessionaires, from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Concessionaire or any Sub-Concessionaire of the terms of the Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Contract (howsoever caused).

16. Indemnity or Bond

16.1. Without prejudice to the generality of the requirements of this this Section C (PENSIONS ISSUES), the Concessionaire shall procure that it and each relevant Sub-Concessionaire shall obtain any indemnity or bond required in accordance with the relevant Admission Agreement.

16.2. The costs of obtaining, maintaining, reviewing and adjusting any indemnity or bond required in accordance with any Admission Agreement shall be borne by the Concessionaire.

17. Right of Set-Off

17.1. The Council shall have a right to set off against any payments due to the Concessionaire under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Concessionaire or from any relevant Sub-Concessionaire (as applicable) under any Admission Agreement.

17.2. In the event that any employee or employer contribution is due under the terms of any Admission Agreement and remains unpaid for a period of nineteen days from the end of the calendar month then the Council shall have the right to deduct an amount equivalent to two months' employee and employer contributions from the next payment due to the Concessionaire under this Contract and to continue to deduct each month amounts equivalent to the unpaid employee and employer contributions for as long as such contributions shall remain unpaid by the Concessionaire or Sub-Concessionaire as appropriate. The amounts deducted pursuant to this paragraph shall be paid by the Council to the Administering Authority for the credit of the Fund in relation to the Eligible Employees. Once all outstanding employer and employee contributions have been paid in full by the Concessionaire or Sub-Concessionaire any amounts in excess of this sum deducted by the Council pursuant to this paragraph shall be reimbursed to the Concessionaire. On each occasion this provision is invoked the Concessionaire shall pay to the Council an administration fee of one hundred pounds (£100) (which amount shall be increased on each anniversary of the Commencement Date by the increase in RPI during the previous year plus three per cent (3%)) and in addition the Concessionaire shall pay to the Council any interest which the Council has paid as a result of the late payment of any contributions by the Concessionaire.

18. Concessionaire or Sub-Concessionaire ceases to be an Admission Body

18.1. If the Concessionaire or any Sub-Concessionaire employs any Eligible Employees from a Relevant Transfer Date and:-

- 18.1.1. the Concessionaire or any relevant Sub-Concessionaire does not wish to offer those Eligible Employees membership of the LGPS; or
- 18.1.2. the Council and the Concessionaire (or any relevant Sub-Concessionaire) are of the opinion that it is not possible to operate the provisions of paragraphs 13 (Concessionaire or Sub-Concessionaire to Become an Admission Body) to 17 (Right of Set Off) inclusive; or
- 18.1.3. if for any reason after the Relevant Transfer Date the Concessionaire or any relevant Sub-Concessionaire ceases to be an Admission Body other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible Employees,

then the provisions of paragraphs 13 (Concessionaire or Sub-Concessionaire to Become an Admission Body) to 17 (Right of Set Off) inclusive shall not apply (without prejudice to any rights of the Council under those paragraphs) and the provisions of paragraph 19 (Concessionaire Scheme) shall apply.

19. Concessionaire Scheme

19.1. The Concessionaire shall, and shall procure that any relevant Sub-Concessionaire shall, not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes shall be **"the Concessionaire Scheme"** for the purposes of this paragraph 19. Such pension scheme or schemes must be:-

- 19.1.1. established at least three (3) months before the Relevant Transfer Date or Cessation Date (as the case may be);
 - 19.1.2. reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
 - 19.1.3. a registered pension scheme within the meaning of Section 150(2) of the Finance Act 2004; and
 - 19.1.4. certified by the Government Actuary's Department or by an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS.
- 19.2. The Concessionaire undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall and shall procure that any relevant Sub-Concessionaire shall procure that:-
- 19.2.1. the Eligible Employees shall by three (3) months before the Relevant Transfer Date or the Cessation Date (as the case may be) be offered membership of the Concessionaire Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
 - 19.2.2. the Concessionaire Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department or an actuary nominated by the

Council in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the LGPS had they continued in membership of the LGPS;

- 19.2.3. if the Concessionaire Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Concessionaire or relevant Sub-Concessionaire. The replacement scheme must comply with this paragraph 19 (Concessionaire Scheme) as if it were the Concessionaire Scheme;
 - 19.2.4. before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Concessionaire Scheme shall undertake by deed to the Council and to the Administering Authority that they shall co-operate with the provisions of paragraph 19 (Concessionaire Scheme), paragraph 20 (Undertaking from the Concessionaire) and Appendix 2 (Bulk Transfer Terms) to the extent applicable to them; and
 - 19.2.5. where the Concessionaire Scheme has not been established at the Relevant Transfer Date or Cessation Date (as the case may be), the Eligible Employees shall be provided with benefits in respect of death-in-service which are no less favourable than the death-in-service benefits provided by the LGPS immediately before the Relevant Transfer Date or Cessation Date (as the case may be). Such benefits will continue to be provided until broadly comparable death-in-service benefits are provided by the Concessionaire Scheme.
- 19.3. Appendix 2 (Bulk Transfer Terms) shall apply in relation to the terms for bulk transfers from the LGPS to the Concessionaire Scheme following the Relevant Transfer Date and any subsequent bulk transfers under this Contract.

20. Undertaking from the Concessionaire

- 20.1. The Concessionaire undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:-
 - 20.1.1. all information which the Council or the Administering Authority or their respective professional advisers may reasonably request from the Concessionaire or any relevant Sub-Concessionaire for the administration of the LGPS or concerning any other matters raised in paragraph 19 (Concessionaire Scheme) or paragraph 20 (Undertaking from the Concessionaire) shall be supplied to them as expeditiously as possible. The Concessionaire will provide such information in a format as specified by the Council. This includes but is not limited to provision of data via the i-Connect system;
 - 20.1.2. it shall not and shall procure that any relevant Sub-Concessionaire shall not, without the consent in writing of the Council (which shall only be given subject to the payment by the Concessionaire or the relevant Sub-Concessionaire of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
 - 20.1.3. until the Relevant Transfer Date, it shall not, and shall procure that any relevant Sub-Concessionaire shall not, issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 13 (Concessionaire or Sub-Concessionaire to Become an Admission Body) to 18 (Concessionaire or Sub-

Concessionaire ceases to be an Admission Body) inclusive without the consent in writing of the Council and the Administering Authority (not to be unreasonably withheld or delayed);

20.1.4. it shall not, and shall procure that any relevant Sub-Concessionaire shall not, take or omit to take any action which would materially affect the benefits under the LGPS or under the Concessionaire Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed), provided that the Concessionaire and/or such Sub-Concessionaire will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and

20.1.5. it shall, and shall procure that any relevant Sub-Concessionaire shall, offer any of its Eligible Employees who cease to be engaged in the provision of the Services (and thereby cease to be eligible for membership of the LGPS) membership of the Concessionaire Scheme immediately after ceasing to be so engaged.

21. Ill health retirements

21.1. In the event that an Eligible Employee is subject to an Ill Health Retirement, if the fact and the nature of the ill health or infirmity of body or mind which resulted in the Ill Health Retirement were notified by that Eligible Employee to the Council prior to the Commencement Date, then any additional costs to the Fund resulting from such Ill Health Retirement shall be payable by the Council. In the event that such ill health or infirmity of body or mind was caused both by employment by the Council and by employment by the Concessionaire, the apportionment of causation shall be undertaken by a medical practitioner who is an independent occupational health physician jointly appointed by the parties or, failing agreement as to the appointment, in accordance with Condition 41 (Dispute Resolution).

22. Discretionary Benefits

22.1. Where the Concessionaire or a Sub-Concessionaire is an Admission Body, the Concessionaire shall and/or shall procure that any relevant Sub-Concessionaire shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.

22.2. Where the award of benefits in paragraph 22.1 is not permitted under the Compensation Regulations and/or the LGPS, or the Concessionaire and/or the Sub-Concessionaire is not an Admission Body, the Concessionaire shall and/or shall procure that any Sub-Concessionaire shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.

22.3. Under paragraphs 22.1 and 22.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Concessionaire shall and/or shall procure that any relevant Sub-Concessionaire shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

23. Claims from Eligible Employees or Trade Unions

23.1. The Concessionaire hereby indemnifies the Council and/or any Future Concessionaire and, in each case, their Sub-Concessionaires, from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees, which losses:-

23.1.1. relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or

23.1.2. arise out of the failure of the Concessionaire and/or any relevant Sub- Concessionaire to comply with the provisions of this Section C (PENSIONS ISSUES) before the date of termination or expiry of this Contract

unless such losses are as a result of a failure by the Council or the Administering Authority to comply with the terms of this Contract or the Admission Agreement.

23.2. The Council hereby indemnifies the Concessionaire and/or relevant Sub-Concessionaire from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which Direct Losses:

23.2.1. relate to pension rights in respect of periods of employment before the Service Transfer Date; or

23.2.2. arise out of the failure of the Council to comply with the provisions of this Section C (PENSIONS ISSUES) before the date of termination or expiry of this Contract.

24. Contracts (Rights of Third Parties) Act 1999

24.1. The Council and the Concessionaire agree, and the Concessionaire shall procure that each relevant Sub-Concessionaire shall agree, that Condition 49.1 (Rights of Third Parties) of this Contract shall not apply to Section C (PENSIONS ISSUES) to the extent that:

24.1.1. Eligible Employees will have the benefit of and may enforce the terms of this Section C (PENSIONS ISSUES); and

24.1.2. the Administering Authority will have the benefit of and may enforce the terms of paragraph 30.1

subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

25. Transfer to another Employer

25.1. Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Concessionaire shall and shall procure that any relevant Sub-Concessionaire shall:-

25.1.1. consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and

25.1.2. procure that the employer to which the Eligible Employees are transferred (the “**New Employer**”) complies with the provisions of Section C (PENSIONS ISSUES) provided that references to the “Sub-Concessionaire” will become references to the New Employer,

references to “Relevant Transfer Date” will become references to the date of the transfer to the New Employer and references to “Eligible Employees” will become references to the Eligible Employees so transferred to the New Employer.

26. Undertakings

26.1. The Concessionaire shall (and shall procure that each relevant Sub-Concessionaire shall):-

- 26.1.1. maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Concessionaire or any Sub-Concessionaire in the provision of the Services on the expiry or termination of this Contract (including without limitation the identification of the Eligible Employees);
- 26.1.2. promptly provide to the Council such documents and information mentioned in paragraph 26.1.1 which the Council may reasonably request in advance of the expiry or termination of this Contract;
- 26.1.3. fully co-operate (and procure that the trustees of the Concessionaire Scheme shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Concessionaire or any Sub-Concessionaire in the provision of the Services on the expiry or termination of this Contract;
- 26.1.4. notify the Council of those Concessionaire Decisions numbered (a) to (e) in the definition of “**Concessionaire Decision**” within twenty (20) Business Days of the date of such decision;
- 26.1.5. provide to the Council on request such information it may reasonably require to satisfy itself that any Relevant Eligible Employee is substantially employed by the Concessionaire in carrying out duties relevant to this Contract; and
- 26.1.6. on each anniversary of the Agreement Date, notify the Council whether any of the Eligible Employees have not been wholly employed by the Concessionaire in the provision of the Services. In the event that they have not, the Concessionaire shall meet with the Council to discuss in respect of each such Relevant Eligible Employee the particular circumstances which have led to them not being wholly employed in the provision of the Services. In these circumstances, and if the Council (acting reasonably) so elects, the parties shall seek to agree a fair and reasonable recovery by the Council of the Reimbursed Pension Contribution(s) pursuant to paragraph 29.1 below according to the percentage of their time each such Relevant Eligible Employee was not wholly employed in the provision of the Services. In this connection the Concessionaire shall supply such supporting information as the Council may reasonably require. In the event that the Council, acting reasonably, consider that the proportion based on the percentage of each employee’s time would not represent a fair and reasonable recovery, then the parties shall seek to agree a fair and reasonable recovery on another basis. If the parties cannot agree the fair and reasonable recovery to be made by the Council the matter shall be resolved by reference to the procedure in Condition 41 (Dispute Resolution).

27. Funding on Commencement

27.1. The Council shall procure that when the Concessionaire or a Sub-Concessionaire enters into an Admission Agreement pursuant to paragraph 13 (Concessionaire or Sub-Concessionaire to

Become an Admission Body), the Concessionaire or the Sub-Concessionaire as appropriate shall be credited by the Administering Authority with a notional fund within the Fund at the Relevant Transfer Date (which for the avoidance of doubt shall not constitute an admission agreement fund for the purposes of Regulation 54 of the LGPS Regulations) of such amount to meet the cost of providing the benefits of the Eligible Employees accrued in the Fund before the Relevant Transfer Date (the “**Notional Fund**”). The amount of the Notional Fund shall be determined by an actuary appointed by the Administering Authority using the ongoing actuarial methods and assumptions used in the actuarial valuation of the Fund (or revision thereto) preceding the Relevant Transfer Date and shall be based on the Eligible Employees’ Pensionable Pay immediately before the Relevant Transfer Date and shall make allowance for prospective salary increases for such Eligible Employees in accordance with those actuarial methods and assumptions.

28. Employee Contributions

- 28.1. The Concessionaire shall, in respect of the Eligible Employees who are active members of the LGPS deduct any employee contributions due from them from their salaries and remit such contributions to the Fund as soon as practicable.

29. Employer Contributions

- 29.1. Subject to paragraphs 29.2 29.4 and 29.5 below, the Council shall on a monthly basis reimburse the Concessionaire for an amount equal to any payments required to be made by the Concessionaire to the Administering Authority or the Fund under the terms of the Admission Agreement which is in excess of any amount equal to payments at the Agreed Contribution Rate in respect of Eligible Employees who are active members of the Fund in that period (each such amount being a “**Reimbursed Pension Contribution**”).
- 29.2. Any payments required to be made to the Administering Authority or the Fund as a result of a Concessionaire Decision shall be payable by the Concessionaire.
- 29.3. The Concessionaire shall on a monthly basis pay to the Council any amounts by which an amount equal to payments at the Agreed Contribution Rate in respect of Eligible Employees who are active members of the Fund in that period would exceed the payments which are required to be made by the Concessionaire to the Administering Authority or the Fund under the terms of the Admission Agreement in respect of such employees during that period.
- 29.4. If, during the term of the Admission Agreement the increases in pay (where “pay” has the same meaning as that set out in Regulation 20 of the LGPS Regulations) of the Eligible Employees are in excess of the Pension Index on a cumulative basis over the elapsed part of the Contract Period, then either party on becoming aware of this shall bring such matter to the attention of the other party and any such increases in pay in excess of the Pension Index shall, if the Council so elects, be treated as a Concessionaire Decision and the provisions of paragraphs 29.1 - 29.3 above shall apply in order to ensure that Reimbursed Pension Contributions are not in excess of those which would have been paid by the Council, if the increases in pay referred to in this paragraph 29.4 had been the same as the Pension Index. Deductions from the Reimbursed Pension Contributions pursuant to this paragraph 29.4 shall be made at each valuation by ascertaining an appropriate portion of the employer’s contribution rate payable by the Concessionaire pursuant to the Admission Agreement which will not be reimbursed by the Council through Reimbursed Pension Contributions (which shall be agreed or determined in accordance with paragraphs 29.1 - 29.3 above).

29.5. For the avoidance of doubt, any payments required to be made to the Administering Authority or the Fund as a result of a Concessionaire Decision shall be payable by the Concessionaire, and the Council may recover from the Concessionaire any part of the Reimbursed Pension Contributions which is subsequently found to relate to any part of any payments made by the Concessionaire to the Administering Authority as the result of a Concessionaire Decision. Any payments required to be made to the Administering Authority or the Fund as a result of a Concessionaire Decision shall be calculated by the Administering Authority and notified to, and agreed by, the Concessionaire and, if not agreed between the parties, determined by reference to an independent actuary appointed by agreement of the Parties.

30. Funding on Expiry or Termination

30.1. On the expiry or earlier termination of the Admission Agreement:

30.1.1. the Council agrees to reimburse to the Concessionaire any Deficit Contribution payable by the Concessionaire or any Sub-Concessionaire in accordance with the terms of the relevant Admission Agreement and the LGPS Regulations within twenty (20) Business Days of the payment of any such Deficit Contribution to the Administering Authority (save to the extent that the Deficit Contribution arose as a result of a Concessionaire Decision); and

30.1.2. in consideration of the Council agreeing to make such reimbursement, the Concessionaire hereby:

30.1.2.1. waives its right under Regulation 64 of the LGPS Regulations to receive any Exit Credit otherwise due from the Administering Authority under that Regulation 64, and agrees to procure that each Sub-Concessionaire shall waive any such right it may have under that Regulation 64;

30.1.2.2. releases the Administering Authority from any obligation to pay any such Exit Credit to the Concessionaire, and agrees to procure that each Sub-Concessionaire shall so release the Administering Authority from any obligation to pay any such Exit Credit to the relevant Sub-Concessionaire; and

30.1.2.3. agrees to reimburse forthwith to the Administering Authority any sums received from the Administering Authority by way of an Exit Credit, and agrees to procure that each Sub-Concessionaire shall so reimburse to the Administering Authority any sums received by that Sub-Concessionaire from the Administering Authority by way of an Exit Credit.

30.2. In the event that the waiver and release in paragraph 30.1.2 are ineffective or unenforceable for any reason, the Concessionaire (on behalf of itself and each relevant Sub-Concessionaire):

30.2.1. hereby authorises and requires the Administering Authority to pay any exit credit otherwise due to the Concessionaire or any Sub-Concessionaire to the Council; and

30.2.2. in the event that the Concessionaire or any Sub-Concessionaire receives an exit credit from the Administering Authority, agrees to pay (or shall procure that any relevant Sub-Concessionaire as appropriate shall pay) to the Council within ten (10) Business Days of receipt of such exit credit a sum equivalent to the exit credit received by the Concessionaire or relevant Sub-Concessionaire (as appropriate) from the Administering Authority.

31. Adjustment

31.1. In addition, if

- 31.1.1. the employer contributions or payments made by the Concessionaire into a pension scheme in respect of any new employee of the Concessionaire or any Sub-Concessionaire assigned to the provision of the Services who is not an Eligible Employee (a "**New Employee**") are lower than the Agreed Contribution Rate payable in respect of an Eligible Employee; and/or
- 31.1.2. there are any Eligible Employees who are eligible to join the LGPS on a Relevant Transfer Date but have not yet joined the LGPS (the "**Non Joiners**") (and an Eligible Employee who subsequently joins the LGPS will automatically cease to be categorised as a Non Joiner)

then the Concessionaire will pay to the Council on a monthly basis an amount equal to **(A - B)**, where:

- A** equals the employer contributions or payments that would have been paid to the Fund in the relevant month at the Agreed Contribution Rate if the New Employees and/or Non Joiners had been members of the LGPS; and
- B** equals the employer contributions or payments (if any) which have been paid into a pension scheme in respect of the New Employees and/or the Non Joiners (capped at 6% of basic salary).

32. Liability for Costs

- 32.1. The costs of the Council necessarily and reasonably incurred in connection with each Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with paragraph 19.1.4 shall be borne by the Concessionaire subject to those costs not exceeding [£] (exclusive of VAT).

Appendix 1
FIRST EMPLOYEE LIST

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Appendix 2
BULK TRANSFER TERMS

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Schedule 5 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The contact details of the Controller’s Data Protection Officer are:
2. The contact details of the Processor’s Data Protection Officer are:
[Note: Concessionaire to confirm details.]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule 5 (Processing, Personal Data and Data Subjects).

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Concessionaire is the Processor in accordance with Condition 26.1.
Subject matter of the processing	[The processing is needed in order to ensure that the Concessionaire can effectively deliver this Contract to provide the Services.
Duration of the processing	Personal Data shall be processed by the Concessionaire for the duration of the Contract Period.
Nature and purposes of the processing	The Personal Data is processed by the Concessionaire for the provision of the Services pursuant to this Contract.
Type of Personal Data being Processed	Personal Data of individuals contained in documents or information provided to the Concessionaire by or on behalf of the Council. This will vary depending on the specific Services and could in relation to some of the Services include Special Category Data.
Categories of Data Subject	They shall include any individual identified in any documents or information provided to the Concessionaire by the Council in conjunction with the Services.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The Concessionaire may retain the Personal Data for a period of seven (7) Years following the expiry of the Contract.]

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Schedule 10 PERFORMANCE REGIME

1. Definitions and Interpretation

In this Schedule 10 (Performance Regime) the following expressions shall have the following meanings unless the context otherwise requires:

“Key Performance Indicators” or “KPIs”	means the key performance indicators set out in Appendix 1 (KPIs) of this Schedule 10 (Performance Regime);
“KPI Target”	means the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Appendix 1 (KPIs) of this Schedule 10 (Performance Regime);
“Month”	means a calendar month and “Monthly” shall be interpreted accordingly;
“Performance Failure”	has the meaning given to it in paragraph 2.4 of this Schedule 10 (Performance Regime);
“Performance Report”	means the Monthly report compiled by the Concessionaire detailing their performance in meeting the Target KPIs, the template of which is set out in Appendix 2 (Template Performance Report) of this Schedule 10 (Performance Regime) and as amended from time to time;
“Persistent KPI Failure”	means the Concessionaire’s continuing failure to meet certain Target KPIs as more particularly described in the column entitled “Persistent KPI Failure” in the table in Appendix 1 (KPIs) of this Schedule 10 (Performance Regime);

2. Concessionaire Monitoring

- 2.1. The Concessionaire shall monitor its performance under this Contract and in particular the satisfaction of the KPIs at its own expense as part of the overall performance provision of the Services in accordance with this Schedule 10 (Performance Regime) and any other provisions of this Contract.
- 2.2. The KPIs as set out in Appendix 1 (KPIs) of this Schedule 10 (Performance Regime) shall apply in full for the Contract Period and contain a non-exhaustive remedy to the Council in respect of any failure by the Concessionaire to deliver the Services in accordance with this Contract.
- 2.3. The Concessionaire shall be responsible for the monitoring and accurate reporting at all times of its own performance and delivery of the Services and of compliance with, or default under, the requirements of this Contract.
- 2.4. Where any breach of or failure to satisfy any KPI Target (**“Performance Failure”**) comes to the notice of the Concessionaire, the Concessionaire shall report this in reasonable detail to the Authorised Officer as soon as reasonably practicable.
- 2.5. The Concessionaire shall monitor its performance against each KPI by completing and returning to the Council a Performance Report within five (5) Working Days of the end of

each Month in the format set out in Appendix 2 (Template Performance Report) of Schedule 10 (Performance Regime).

- 2.6. The Council shall review the Performance Report in order to assess and measure, in particular, the Concessionaire's performance in respect of the satisfaction of the KPIs.
- 2.7. The contents of the Performance Reports shall be discussed at the performance review meetings conducted in pursuance to Condition 8.5 of this Contract.
- 2.8. Notwithstanding the Council's rights pursuant to paragraph 3 of this Schedule 10 (Performance Regime), the Council may in its absolute discretion, undertake its own assessment and monitoring in seeking to verify the accuracy of any submissions made to them by the Concessionaire and the Concessionaire shall facilitate such assessment acting reasonably and in good faith, promptly advising the Council with access to all records and granting to the Council all other assistance which it may reasonably require.
- 2.9. The KPIs shall be reviewed by the Concessionaire and the Council each Year to ensure they continue to align with this Contract.
- 2.10. Following the review described by paragraph 2.9 of this Schedule 10 (Performance Regime), the Council may adapt and finesse the KPIs but shall not increase the Concessionaire's obligations so as to ensure that the Concessionaire is in no better and no worse position.

3. Council Monitoring

The Council shall, at its own cost, undertake their own performance monitoring of the operation of the Contract and in order to assess the Concessionaire's performance in respect of the delivery of the Services. The Concessionaire shall use all reasonable endeavours to assist the Council in such an exercise. The Council shall notify the Concessionaire of the outcome of any performance monitoring exercise and the Concessionaire shall have due regard to the Council's comments in relation to the future provision of the Services.

4. Persistent KPI Failure

In the event that the Concessionaire commits a Persistent KPI Failure, the Council shall be entitled to terminate this Contract in accordance with Condition 39 (Termination).

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Schedule 11 COUNCIL'S INTER-AGENCY GUIDELINES

Safeguarding Children

The Concessionaire shall provide the Services in accordance with the protocols and procedures of the Local Safeguarding board in the Borough. In particular, the Concessionaire shall be familiar with the London Child Protection Procedures. These protocols and procedures are available on request or can be found on the Council's website at the following page:

<http://www.wandsworth.gov.uk/wscb>

then click on the box "Worried about a Child?" on the right hand side of the page, then click on Policies and procedures on the left hand side of the page.

Safeguarding Vulnerable Adults

The Concessionaire shall provide the Services in accordance with the Council's Interagency Guidelines for Protecting Adults, which are available on request or can be found on the Council's website at the following page:

<https://www.richmond.gov.uk/sab>

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Schedule 12 CHECK BEFORE CONTACT REGISTER INFORMATION SHARING PROTOCOL

A Protocol for the exchange and management of information for use in conjunction with Wandsworth Council’s check before contact register and in partnership with the Council’s contractors (September 2012)

SIGNATORIES SECTION

Wandsworth Borough Council and _____, described in this protocol as “partners”, in recognition of our responsibilities for the health and safety of our employees and non-employees under the Health and Safety at Work etc Act 1974 and for the way we manage personal information under the Data Protection Act 1998, have agreed the following information exchange protocol.

By signing this protocol we declare our commitment to the procedures it sets out:

AGREEMENT

SIGNED _____ Date: _____

Director of (Department)
Wandsworth Council

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SIGNED _____ Date: _____

Print Name: _____

Designation: _____

Concessionaire’s Name: _____

Any partner may withdraw from this protocol upon giving written notice to the other signatory. Data that is no longer relevant should be destroyed or returned. The partner must continue to comply with the terms of this protocol in respect of any data that the partner has obtained through being a signatory.

1. Introduction

1. Wandsworth Council's staff are occasionally subjected to acts of physical violence and/or threatening behaviour during their course of work, especially during lone working and visiting the homes of the Council's residents. In trying to control the risks, a database has been set up to hold information about members of the public who have acted in a violent and/or threatening manner towards the Council's staff, or have the potential of being violent (the "Check Before Contact Register").
2. The Council acknowledges that its contractors may also come into contact with some potentially violent or threatening persons, and hence should be provided with relevant and factual information from the Register in order to minimise the risks of such acts of violence and threatening behaviour.
3. In addition, contractors' staff could be subject to physical violence and/or threatening behaviour in the first instance. The Council expects full reporting of such incidents and cooperation of the contractor in their investigation and any follow-up action. Categories of incidents are shown in Appendix A to this protocol.
4. It is important for both the Council and its contractors to exchange relevant information with the overall aim of ensuring the health and safety of staff and to reduce the likelihood of incidents.
5. The purpose of this protocol is to facilitate such exchange of information and to set rules for this.

2. Partnership Responsibilities:

- 1 Partners will ensure that:
 - (a) information exchanged will be accurate, fair and conform to the principles of the Data Protection Act 1998;
 - (b) only the minimum amount of information necessary will be provided;
 - (c) under no circumstances will personal information be divulged to third parties;
 - (d) under no circumstances will a customer/client be informed by the contractor that his/her details are on the Check Before Contact Register;
 - (e) the contractor will abide by the 'minimum control measures' information (as provided by the Council) and their own guidelines/procedures/staff training as regards dealing with confrontational situations;
 - (f) partners will enforce all sections of this protocol;
 - (g) exchanges of information will be recorded for audit purposes; and
 - (h) this protocol will be reviewed annually.

3. Legal Considerations

1. This protocol is subject to various legislation which governs how information can be exchanged. One of the main principles underlying the disclosure of personal information is the

duty of confidentiality owed to the public. The public interest in disclosure should be weighed against any potential prejudice to the individual.

2. Section 115 of the Crime and Disorder Act 1998 (CDA) allows contractors to provide information to the Council where “necessary and expedient” for the purposes of the Act. Appendix B gives examples of activities covered by the CDA.
3. The main Act governing the exchange of personal information and protection of the data subject’s rights is the Data Protection Act 1998 (DPA). The DPA covers all personal information that relates to living people. It does not cover depersonalised information. The principles governing this Act are included in Appendix C.
4. Under the DPA personal information can be disclosed with the data subject’s consent. Even without consent there may still be lawful grounds for disclosure, e.g. if it is necessary for compliance with a legal obligation other than one imposed by contract (such as health and safety duties); for the exercise of any functions conferred by or under any enactment; or for the exercise of any function of a public nature exercised in the public interest.
5. The Information Commissioner’s guidance relating to the passing of information of this nature to other organisations recognises that there may be good reason to alert them to a potential risk to their own staff. However, whereas the most appropriate DPA Schedule 2 and 3 conditions for processing this information internally relate to the Council’s legal obligations towards the health and safety of its own staff, the Commissioner highlights that these specific conditions cannot be relied upon for passing information to other organisations, as such legal obligations must relate to the data controller’s own staff, not those of another organisation. Accordingly, in relation to Schedule 2 DPA, the Council relies on condition 6(1) in that “the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject”. In relation to Schedule 3 conditions for sensitive personal data (for example relating to offending or alleged offending), the Commissioner’s guidance acknowledges that “where there is a good reason for providing the information to another organisation, for example, to alert them to the potential risk to their staff, this will be justified even though no Schedule 3 condition obviously applies. In these cases our focus is on whether the processing is justified and not unfair”.
6. By signing this protocol the partners agree to comply with all relevant legal requirements.

4. Information Exchange Process

1. General guidance for partners
 - a. Personal data from the Register remains the property of the Council, and is the responsibility of the data controller as defined by the Data Protection Act 1998. For the purposes of this protocol data control is a function of the Information Co-ordinators (“IC”). The Council department, with whom the Contractor has entered this agreement, remains responsible for the

processing of the data. The Concessionaire receiving the data will not use it for any purpose other than that set out in this protocol, nor share it with any other party, without the Council's written permission.

- b. As part of the contract to provide a service to the Council, the Concessionaire is expected to make arrangements with the nominated ICs to be supplied with the relevant information.
- c. Initially, pending the development of an Internet-based system, information will be provided in hard copy format. Hard copy information would also be used as a back-up should the Internet-based system be unavailable for a period of time.
- d. In due course, relevant data from the Check Before Contact Register will be made available to the contractors via a secure portal through the Internet. The Concessionaire will then be expected to check the Check Before Contact Register before they visit a site.
- e. The Concessionaire will hold data supplied to them in a secure place for no longer than is necessary. Data storage will be reviewed regularly and old information disposed of securely.
- f. Access to personal information by staff other than nominated ICs will be limited to employees whose work is likely to bring them in contact with persons included on the Check Before Contact Register.
- g. In cases where the Concessionaire becomes aware of information, which was previously unknown to the Council, and which may lead to either the prevention or reduction of crime and disorder then the disclosure of that information to the Council will be covered by this protocol.

2 Guidance for nominated Information Co-ordinators

- a. Each partner will nominate an information co-ordinator IC who will manage the information exchange. Only the ICs of partner agencies can make formal requests and document agreements for sharing personal information.
- b. To this end, the departmental representative on the Check Before Contact Register Working Group is the nominated IC for the department. He/she may nominate a deputy in his/her absence and/or delegate this task to an appropriate member of the department, and the department may also provide the contractor with contact details other relevant officers.

Departmental IC: 020-8871 xxxx

Deputy IC: 020-8871 xxxx

Other contacts:

Email address for contacting Departmental IC: _

Concessionaire IC: _____

[]: _____

Email Address: _____

- c. IC responsibilities include ensuring that:
 - a. processing personal data is in keeping with the Data Protection Act 1998;
 - b. When dealing with sensitive personal data, it is kept securely and processed in accordance with the rights of the data subjects in keeping with the Data Protection Act 1998;
 - c. information disclosure is for the detection and prevention of crime and disorder stipulated in S115 of the CDA; and
 - d. they keep a record of all their information sharing documents including taking notes of all meetings, correspondence and phone calls.

5. Security and Data Management

1. It is the partners' responsibility to ensure that adequate security arrangements are in place, in order to protect the integrity and confidentiality of the information held.
2. Disclosed personal information must:
 - a. be protected by back-up rules
 - b. be password protected
 - c. be stored in a secure filing cabinet when not in use
 - d. be located in a geographically secure place
3. The partners understand that all these measures need to be taken to ensure their security and to protect the general public. They agree that all information retained by them will be kept securely and for no longer than is necessary.
4. All data held by the partners is subject to a specified 'shelf-life' to be agreed by each partner.
5. Any historic/out-of-date electronic and/or hard-copy information containing personal data must be deleted / shredded or otherwise disposed securely.

6. Audit

1. Audit of Data: Partners undertake to ensure that they will collect, process, store and disclose all data held by them, within the terms of this protocol and the relevant legislation; and to ensure that all information held is accurate, relevant and fit for the purpose for which it is intended.
2. Audit of Security: Partners agree to store and dispose of all data securely, and to conduct annual audits of their security arrangements to ensure they are effective.

3. Audit of Protocol: Partners undertake to conduct regular audits of the use of this protocol to amend it as necessary and ensure it remains effective.

7. Complaints and breaches

Complaints:

1. Initial complaints must be referred to the appropriate IC.
2. Partners undertake to do all that they can within the guidelines of the Data Protection Act 1998, to assist with any complaint.

Breaches:

1. Partners agree that any breach of confidentiality will seriously undermine and affect the credibility of the partnership objectives and may constitute a breach of the law.
2. Partners undertake at all times to comply with data protection and other legal requirements relating to confidentiality. Any breaches may constitute gross misconduct and appropriate disciplinary action may follow.

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APPENDIX A

INCIDENT CATEGORIES

Main type	Sub-category	Risk level	Review
1. Threat	Verbal/written threatening behaviour towards staff. Includes threats of sexual or hate abuse nature.	Medium	24 Months
2. Assault	2.1 Minor assaults (e.g. pushing)	High	36 Months
	2.2 Serious assaults (e.g. punching, kicking)	Very high	60 Months
	2.3 Detention of staff against their will (hostage incidents)	Very high	60 Months
	2.4 Attack using a weapon or implement or known possession of dangerous weapons or firearms	Very high	60 Months
	2.5 Fatality	Very high	60 Months
	2.6 Sexual assault	Very high	60 Months
	2.7 Serious sex offender	extremely high	9999

APPENDIX B

PROVISIONS OF THE CRIME AND DISORDER ACT 1998

Matters covered by the Crime and Disorder Act 1998 include:

- Anti-Social Behaviour Orders
- Child Safety Orders
- Detention and Training Orders
- Drug Treatment and Testing
- Local Child Curfew Schemes
- Parenting Orders
- Seizure of noise-making equipment
- Car crime
- Racially aggravated offences
- Reparation Orders
- Removal of truants
- Supervision Orders
- Youth Courts
- Youth Justice Plans
- Youth Offending Teams
- Sex Offender Orders
- The reduction of crime and disorder in the area
- Reprimands and warnings (and cautions/supported cautions in the interim period)

Data Protection Principles:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.

5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

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APPENDIX C

CHECK BEFORE CONTACT REGISTER GUIDANCE

1. Introduction and Purpose of the CBCR (“CBCR”)

- 1.1. Wandsworth Council has a duty of care to its staff and contractors to protect them from foreseeable risks in their work. One such risk is that of violence, or threats of violence, from members of the public. In many cases this cannot be foreseen; however, in some instances there will have been previous incidents of aggressive or violent behaviour. The Check Before Contact Register (CBCR) has been set up to keep a record of residents, service users and members of the public whose past behaviour gives the Council credible grounds for believing that they may be a risk to our staff, contractors or elected members.
- 1.2. All Council employees, contractors and elected members who have direct personal dealings with the public, whether in their homes, neutral locations or on Council premises (e.g. in interview rooms or “pods”) should ensure that CBCR has been checked before they meet the person concerned. Depending on access permissions, employees may be able to access the register themselves; if not, they can do so via their directorate authorised user who will be able to check the register on their behalf.

2. Scope of the CBCR

- 2.1. The CBCR has a specific purpose; namely to identify individuals who may pose a direct threat to staff, contractors and elected members. Therefore, only violent or directly threatening behaviour should lead to inclusion on the CBCR. The CBCR is not a register of individuals whose behaviour is offensive, abusive or otherwise anti-social (even where such behaviour may constitute a criminal or civil offence).
- 2.2. Where an individual behaves in a manner which, although not violent or threatening, is nonetheless abusive, this should be reported using the Councils’ Incident Reporting procedures. Where abuse is directed personally at members of staff, especially if the language used is discriminatory (e.g. racist, sexist, homophobic etc.) then such incidents must always be recorded and reported to the police if necessary. The Council can instigate appropriate action against individuals in such cases. Such action may take the form of a warning letter to the person concerned, or may involve formal proceedings. However, such cases will not be recorded on the CBCR unless a credible risk to staff has been established.

3. Legal Context

- 3.1. The recording and sharing of data relating to identifiable living persons is governed by the Data Protection Act 1998 (DPA). In terms of the CBCR, in order to maintain compliance with the provisions of the DPA, information that is held about individual people must be:
 - 3.1.1. Factual (i.e. must relate to actual events and not subjective perception of the person’s character)
 - 3.1.2. Relevant (must directly relate to a risk to Council officers)
 - 3.1.3. Current (the Check Before Contact register should record recent events.)
- 3.2. Normally the DPA forbids the sharing of personal information without the individual’s consent. However, the DPA allows organisations to share information if it can be

demonstrated that it is necessary to comply with legal obligations (in this case the employer's statutory duty of care) or that disclosure is needed in order to prevent crime. It is these exemptions that allow the Council to maintain the CBCR without the consent of the individuals whose details are recorded. In almost all cases, however, the individual will be notified that they have been placed on the register and will have the right to object.

4. Adding Information to the CBCR

4.1. Where assaults and threats occur these should be recorded on the corporate incident form TC1297A, which is available on The Loop. Where assaults and/or threatening behaviour have occurred, the TC1297A form should be brought to the attention of the Directorate CBCR contact, who will consider whether the individual's details should be included on the CBCR. In cases where inclusion is supported by the CBCR Working Group, the requesting officer will be advised accordingly and the Directorate CBCR contact will send a letter to the individual advising them that they are being added to the Register. If the Directorate CBCR contact does not support inclusion on the Check Before Contact Register then they may advise the requesting officer on alternative courses of action.

5. Referrals from Outside Agencies

5.1. Other public authorities, for example the police and probation services, may from time to time contact Council officers with information about persons whom they consider to present a risk. Where such information is received, it should be passed without delay to the Directorate CBCR contact. Where such information is received it may not necessarily be added to the CBCR, as organisations have differing approaches to assessing the risks posed by individuals.

6. Categories

6.1. The table below details categories of incidents that may require individuals to be logged on the CBCR. All entries should be logged under one of the categories shown below; if users require an entry but a category below does not fit they should discuss this with their CBCR directorate lead in the first instance.

Main type	Sub-category	Risk level	Min Review
3. Threat	Verbal/written threat of violence towards staff. Includes threats of sexual or hate abuse nature.	Medium	24 Months
4. Assault	4.1 Minor assaults (e.g. pushing)	High	36 Months
	4.2 Serious assaults (e.g. punching, kicking)	Very high	60 Months
	4.3 Detention of staff against their will (hostage incidents)	Very high	60 Months
	4.4 Attack using a weapon or implement or known possession of dangerous weapons or firearms	Very high	60 Months
	4.5 Fatality	Very high	60 Months

	4.6 Sexual assault	Very high	60 Months
	4.6 Serious sex offender	Extremely high	9999

7. Confidentiality

- 7.1. Information contained on the CBCR is confidential, and highly sensitive. It should only ever be used for the purposes described above. Information that employees view on the CBCR should not be disclosed to, or discussed with, person/s included on the register (or anyone connected to them, such as family, friends and carers. Nor should CBCR information be shared or discussed with third parties (e.g. contractors) as they are able to access the register via their own nominated users where required. CBCR information should not be disclosed to or discussed with colleagues unless there is a justifiable reason. Those with access to the CBCR system should only view relevant information.
- 7.2. Individual use of the CBCR will be monitored, and any abuse of the system, (for example, searches being made on particular persons or addresses without justifiable cause) may result in withdrawal of access rights and could lead to disciplinary action.

8. Information Sharing Protocols

- 8.1. Information sharing with contractors and other third party agencies is carried out by means of signing an information sharing protocol. The sharing of information is limited to that allowed by the DPA and so there must be a justifiable need for the contractor or third party to have access to the CBCR. Contractors and other third parties have nominated CBCR users who are given access rights to the register. Nominated users can carry out searches in the same way as Council employees. They may search for a particular person (if visiting them) or may carry out a search on a particular street or postcode (if their staff are going to be working there-an example would be contract staff replacing windows in a group of council-owned houses or flats).